

Union Calendar No. 303

103^D CONGRESS
2^D SESSION

H. R. 2238

[Report No. 103-545, Parts I and II]

To amend laws relating to Federal procurement, to authorize functions and activities under the Federal Property and Administrative Services Act of 1949, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 24, 1993

Mr. CONYERS (for himself and Mr. DELLUMS) introduced the following bill; which was referred jointly to the Committees on Government Operations and Armed Services

JUNE 13, 1994

Reported from the Committee on Government Operations with an amendment
[Strike out all after the enacting clause and insert the part printed in boldface roman]

JUNE 17, 1994

Additional sponsors: Mr. CLINGER, Mr. KLECZKA, and Mrs. MALONEY

JUNE 17, 1994

Reported from the Committee on Armed Services with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on May 24, 1993]

A BILL

To amend laws relating to Federal procurement, to authorize functions and activities under the Federal Property and

Administrative Services Act of 1949, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 **This Act may be cited as the “Federal Ac-**
5 **quisition Improvement Act of 1993”.**

6 **TITLE I—ENHANCEMENT OF**
7 **COMPETITION IN CONTRACTING**
8 **Subtitle A—Acquisition of**
9 **Commercial Items**

10 **SEC. 111. PREFERENCE FOR ACQUISITION OF COMMERCIAL**
11 **ITEMS.**

12 **Section 16 of the Office of Federal Pro-**
13 **curement Policy Act (41 U.S.C. 414) is amend-**
14 **ed by redesignating paragraphs (2), (3), and**
15 **(4) in order as paragraphs (3), (4), and (5), re-**
16 **spectively, and by inserting after paragraph**
17 **(1) the following new paragraph:**

18 **“(2) implement a preference for the**
19 **acquisition of commercial items by—**

20 **“(A) whenever practicable, stating**
21 **specifications in solicitation for bids**
22 **and proposals in terms such that bid-**
23 **ders and offerors are enabled and en-**
24 **couraged to offer to supply commer-**

1 **cial items in response to agency so-**
2 **licitations;**

3 **“(B) reducing impediments to the**
4 **acquisition of commercial items in**
5 **agency procurement policies, prac-**
6 **tices, and procedures not required by**
7 **law; and**

8 **“(C) requiring training of appro-**
9 **priate personnel in the acquisition of**
10 **commercial items;”.**

11 **SEC. 112. ACQUISITION OF COMMERCIAL ITEMS.**

12 **Section 28 of the Office of Federal Pro-**
13 **curement Policy Act (41 U.S.C. 424) is amend-**
14 **ed to read as follows:**

15 **“SEC. 28. ACQUISITION OF COMMERCIAL ITEMS.**

16 **“(a) MARKET RESEARCH.—Before soliciting**
17 **bids or proposals for a contract for property**
18 **or services, an executive agency shall conduct**
19 **market research, appropriate to the cir-**
20 **cumstances, to determine whether the needs**
21 **of the agency can be met by the acquisition**
22 **of commercial items.**

23 **“(b) ADVOCATE FOR ACQUISITION OF COM-**
24 **MERCIAL ITEMS.—**

1 **“(1) ESTABLISHMENT.—There is estab-**
2 **lished in the Office of Federal Procure-**
3 **ment Policy the position of Advocate for**
4 **the Acquisition of Commercial Items**
5 **(hereinafter in this subsection referred to**
6 **as the ‘Advocate’).**

7 **“(2) FUNCTIONS.—The Advocate shall—**

8 **“(A) monitor compliance by exec-**
9 **utive agencies with the preference re-**
10 **quired under section 16(2) for the ac-**
11 **quisition of commercial items;**

12 **“(B) make recommendations and**
13 **proposals to the Administrator re-**
14 **garding the reform of procurement**
15 **statutes and regulations to implement**
16 **that preference; and**

17 **“(C) report to the Administrator**
18 **on the prospective effect of proposed**
19 **statutes and regulations on the acqui-**
20 **sition of commercial items.”.**

21 **SEC. 113. REGULATIONS AND SIMPLIFIED FORM CON-**
22 **TRACTS.**

23 **(a) REVISION OF FAR.—Unless otherwise**
24 **specifically provided in this title, not later**
25 **than 180 days after the date of the enactment**

1 of this title, the Federal Acquisition Regula-
2 tion issued under section 25(c) of the Office of
3 Federal Procurement Policy Act (41 U.S.C.
4 421(c)) shall be revised to implement the
5 amendments made by this subtitle.

6 (b) SIMPLIFIED UNIFORM CONTRACT.—(1)(A)
7 The revision of the Federal Acquisition Regu-
8 lation under subsection (a) shall include issu-
9 ance of one or more simplified uniform con-
10 tracts for the acquisition of commercial items
11 by Federal agencies and shall require that
12 such simplified uniform contract or contracts
13 be used for the acquisition of commercial
14 items to the maximum extent practicable. The
15 uniform contract or contracts shall include
16 only—

17 (i) those contract clauses that are re-
18 quired to implement provisions of law ap-
19 plicable to such an acquisition;

20 (ii) those contract clauses that are es-
21 sential for the protection of the Federal
22 Government's interest in such an acquisi-
23 tion; and

24 (iii) those contract clauses that are
25 determined to be consistent with stand-

1 **ard commercial practice and appropriate**
2 **for inclusion in such contracts.**

3 **(B) In addition to the clauses described**
4 **under subparagraph (A), contracts for the ac-**
5 **quisition of commercial items may include**
6 **such clauses as are essential for the protec-**
7 **tion of the Federal Government's interest in—**

8 **(i) a particular contract, as deter-**
9 **mined in writing by the contracting offi-**
10 **cer for such contract; or**

11 **(ii) a class of contracts, as determined**
12 **by the agency head, in consultation with**
13 **the Administrator for Federal Procure-**
14 **ment Policy.**

15 **(C) Contracts for the acquisition of com-**
16 **mercial items may not include any clause**
17 **other than those clauses authorized under**
18 **subparagraph (A) or (B).**

19 **(2)(A) Except as provided in subpara-**
20 **graph (B), a prime contractor under a Federal**
21 **agency contract for the acquisition of com-**
22 **mercial items may only be required to include**
23 **in subcontracts under such contract—**

1 **(i) those contract clauses that are re-**
2 **quired to implement provisions of law ap-**
3 **plicable to such subcontracts; and**

4 **(ii) those contract clauses that are es-**
5 **sential for the protection of the Federal**
6 **Government's interest in such sub-**
7 **contracts.**

8 **(B) In addition to the clauses described**
9 **under subparagraph (A), a contractor under**
10 **a Federal agency contract for the acquisition**
11 **of commercial items may be required to in-**
12 **clude in a subcontract under such contract**
13 **such clauses as are essential for the protec-**
14 **tion of the Federal Government's interest in—**

15 **(i) a particular subcontract, as deter-**
16 **mined in writing by the contracting offi-**
17 **cer for such contract; or**

18 **(ii) a class of subcontracts, as deter-**
19 **mined by the agency head, in consulta-**
20 **tion with the Administrator for Federal**
21 **Procurement Policy.**

22 **(C) A Federal agency may not require a**
23 **contractor for the acquisition of commercial**
24 **items to include in a subcontract for that ac-**

1 **quisition any clause other than those clauses**
2 **authorized under subparagraph (A) or (B).**

3 **(3) Notwithstanding paragraphs (1) and**
4 **(2) of this subsection, the Department of De-**
5 **fense may use uniform contract clauses devel-**
6 **oped under paragraphs (2) and (3) of section**
7 **824(b) of the National Defense Authorization**
8 **Act for Fiscal Years 1990 and 1991 (10 U.S.C.**
9 **2325 note; P.L. 101-189) until September 30,**
10 **1995.**

11 **(c) WARRANTIES.—The Federal Acquisition**
12 **Regulation shall require that, to the maxi-**
13 **mum extent practicable, Federal agencies**
14 **take advantage of warranties offered by com-**
15 **mercial contractors and use such warranties**
16 **for the repair and replacement of commercial**
17 **items.**

18 **(d) MARKET ACCEPTANCE.—The Federal Ac-**
19 **quisition Regulation shall direct agencies to**
20 **require, where appropriate and in accordance**
21 **with criteria prescribed in the regulations,**
22 **offerors to demonstrate in their offers that**
23 **products being offered have—**

24 **(1)(A) achieved a level of commercial**
25 **market acceptance necessary to indicate**

1 that the products are suitable for the
2 agency's use; or

3 **(B) been satisfactorily supplied under**
4 **current or recent contracts for the same**
5 **or similar requirements; and**

6 **(2) otherwise meet the product de-**
7 **scription, specifications, or other criteria**
8 **prescribed by the public notice and solici-**
9 **itation.**

10 **(e) PAST PERFORMANCE.—The Federal Ac-**
11 **quisition Regulation shall provide guidance**
12 **to Federal agencies on the use of past per-**
13 **formance of products and sources as a factor**
14 **in award decisions.**

15 **Subtitle B—Miscellaneous**

16 **SEC. 121. TRUTH IN NEGOTIATIONS ACT.**

17 **(a) AMENDMENTS.—Section 304(d)(4) of the**
18 **Federal Property and Administrative Services**
19 **Act of 1949 (41 U.S.C. 254(d)(4)) is amended to**
20 **read as follows:**

21 **“(4) AUTHORITY TO REQUIRE COST OR PRIC-**
22 **ING DATA.—When cost or pricing data need not**
23 **be required to be submitted pursuant to para-**
24 **graph (5), such data shall not be required to**
25 **be submitted unless the head of the agency**

1 **determines that such data are necessary for**
2 **the evaluation by the agency of the reason-**
3 **ableness of the price of the contract or sub-**
4 **contract. In any case in which the head of the**
5 **agency requires such data to be submitted**
6 **under this paragraph, the head of the agency**
7 **shall document in writing the reasons for**
8 **such requirement.”.**

9 **(b) REQUIREMENT FOR REVISED REGULA-**
10 **TIONS.—Not later than 180 days after the date**
11 **of enactment of this Act, the Federal Acquisi-**
12 **tion Regulation issued under section 25(c) of**
13 **the Office of Federal Procurement Policy Act**
14 **(41 U.S.C. 421(c)) shall be revised to imple-**
15 **ment section 304(d)(4) of the Federal Property**
16 **and Administrative Services Act of 1949 (41**
17 **U.S.C. 254(d)) and section 2306a(b) of title 10,**
18 **United States Code, as amended by subsection**
19 **(a) and section 302.**

20 **(c) PROVISIONS TO BE INCLUDED.—(1) In the**
21 **case of contracts other than cost-reimburse-**
22 **ment research and development contracts,**
23 **the revised regulations promulgated under**
24 **subsection (b) shall provide that cost or pric-**
25 **ing data may not be requested from a contrac-**

1 tor when it is likely that circumstances will
2 exist in which an exception to the require-
3 ment to provide such data is authorized by
4 section 304(d)(5) of the Federal Property and
5 Administrative Services Act of 1949 (41 U.S.C.
6 254(d)) or section 2306a(b) of title 10, United
7 States Code, unless the head of the agency de-
8 termines in writing that such data are nec-
9 essary for the evaluation by the agency of the
10 reasonableness of the price of the contract or
11 subcontract.

12 (2) The regulations also shall provide
13 clear standards for determining whether the
14 exceptions authorized by such sections apply.
15 In the case of the exception provided under
16 section 304(d)(5)(A)(i) of such Act and section
17 2306a(b)(1)(A) of such title (relating to ade-
18 quate price competition), the regulations
19 shall specify the criteria that will be used to
20 determine whether adequate price competi-
21 tion exists. In the case of the exception pro-
22 vided under section 304(d)(5)(A)(ii) of such
23 Act and section 2306a(b)(1)(B) of such title (re-
24 lating to established catalog or market prices
25 of commercial items sold in substantial quan-

1 **ties to the general public), the regulations**
2 **shall preclude the consideration of sales to**
3 **the government, including the percentage of**
4 **an item's overall sales that are made to the**
5 **Government, when determining whether the**
6 **item has been sold in substantial quantities to**
7 **the public.**

8 **(3) The regulations also shall establish**
9 **reasonable limitations on requests for sales**
10 **data relating to commercial items.**

11 **SEC. 122. DEFINITIONS.**

12 **(a) OFPP ACT.—Section 4 of the Office of**
13 **Federal Procurement Policy Act (41 U.S.C.**
14 **403) is amended by—**

15 **(1) striking “and” at the end of para-**
16 **graph (10);**

17 **(2) striking the period at the end of**
18 **paragraph (11) and inserting “; and”; and**

19 **(3) adding at the end the following**
20 **new paragraph:**

21 **“(12) the term ‘commercial items’**
22 **means items regularly used in the course**
23 **of normal business operations for other**
24 **than Government purposes, that—**

1 “(A) have been sold, leased, or li-
2 censed to the general public;

3 “(B) have been offered for sale,
4 lease, or license to the general public;

5 “(C) are not yet available in the
6 commercial marketplace, but will be
7 available in time to satisfy the deliv-
8 ery requirements under a Govern-
9 ment solicitation; or

10 “(D) are items that, but for minor
11 modifications made to meet Govern-
12 ment requirements, would satisfy the
13 criteria set forth in subparagraph (A),
14 (B), or (C).”.

15 **(b) FEDERAL PROPERTY AND ADMINISTRA-**
16 **TIVE SERVICES ACT OF 1949.—Section 309(c) of**
17 **the Federal Property and Administrative**
18 **Services Act of 1949 (40 U.S.C. 259(c)) is**
19 **amended by inserting “‘commercial items’,”**
20 **immediately after “‘item of supply’,”.**

21 **(c) COMMERCIAL ITEM DEFINED.—In this**
22 **title, the term “commercial items” has the**
23 **meaning given that term in section 4 of the**
24 **Office of Federal Procurement Policy Act (41**
25 **U.S.C. 403), as amended by subsection (a).**

1 SEC. 123. EFFECTIVE DATE.

2 **Unless otherwise specifically provided in**
3 **this title, the amendments made by this title**
4 **shall be effective 180 days after the date of the**
5 **enactment of this title.**

6 SEC. 124. PROVISIONS NOT AFFECTED.

7 **Nothing in this title shall be construed as**
8 **amending, modifying, or superseding, or is in-**
9 **tended to impair or restrict authorities or re-**
10 **sponsibilities under—**

11 **(1) section 111 of the Federal Prop-**
12 **erty and Administrative Services Act of**
13 **1949 (40 U.S.C. 759), commonly referred**
14 **to as the “Brooks Automatic Data Proc-**
15 **essing Act”;**

16 **(2) title IX of the Federal Property**
17 **and Administrative Services Act of 1949**
18 **(40 U.S.C. 541 et seq.), commonly referred**
19 **to as the “Brooks Architect-Engineers**
20 **Act”;**

21 **(3) the Small Business Act (15 U.S.C.**
22 **631 et seq.), including section 8(a) of that**
23 **Act (15 U.S.C. 637(a)); or**

24 **(4) the Act of June 25, 1938 (41 U.S.C.**
25 **46–48c), commonly referred to as the**
26 **“Javits-Wagner-O’Day Act”.**

1 **TITLE II—AMENDMENTS TO FED-**
2 **ERAL PROPERTY AND ADMIN-**
3 **ISTRATIVE SERVICES ACT OF**
4 **1949**

5 **SEC. 201. AWARD OF MULTIPLE CONTRACTS.**

6 **Section 303B of the Federal Property and**
7 **Administrative Services Act of 1949 (41 U.S.C.**
8 **253b) is amended by adding at the end the fol-**
9 **lowing:**

10 **“(g) AWARD OF MULTIPLE CONTRACTS.—In**
11 **procuring any supply or service using com-**
12 **petitive procedures, an executive agency may**
13 **award more than one contract for the same**
14 **supply or service in any case in which the**
15 **head of the agency determines that it is in the**
16 **best interests of the Government to award**
17 **those contracts for the purpose of maintain-**
18 **ing a continuous source for the supply or**
19 **service.”.**

20 **SEC. 202. SOLICITATION EVALUATION AND AWARD.**

21 **(a) SOLICITATION REQUIREMENTS.—Section**
22 **303A of the Federal Property and Administra-**
23 **tive Services Act of 1949 (41 U.S.C. 253a) is**
24 **amended—**

25 **(1) in subsection (b)(1)(A)—**

1 **(A) by inserting “and significant**
2 **subfactors” after “all significant fac-**
3 **tors”; and**

4 **(B) by striking “(including price)”**
5 **and inserting “(including cost or**
6 **price, cost- or price-related factors,**
7 **and noncost- or nonprice-related fac-**
8 **tors)”;**

9 **(2) in subsection (b)(1)(B) by inserting**
10 **“and subfactors” after “factors”;**

11 **(3) in subsection (b)(2)(B) by amend-**
12 **ing clause (i) to read as follows:**

13 **“(i) a statement that the proposals**
14 **are intended to be evaluated with,**
15 **and award made after, discussions**
16 **with the offerors, or that the propos-**
17 **als are intended to be evaluated, and**
18 **award made, without discussions**
19 **with the offerors (other than discus-**
20 **sions conducted for the purpose of**
21 **minor clarification), unless discus-**
22 **sions are determined to be necessary;**
23 **and”;** and

24 **(4) by adding at the end the following**
25 **new subsection:**

1 **“(c) ESTABLISHING IMPORTANCE OF FAC-**
2 **TORS.—(1) In prescribing the evaluation fac-**
3 **tors to be included in each solicitation for**
4 **competitive proposals, the head of an agen-**
5 **cy—**

6 **“(A) shall clearly establish the rel-**
7 **ative importance assigned to the evalua-**
8 **tion factors and subfactors, including the**
9 **quality of the product or services to be**
10 **provided (including technical capability,**
11 **management capability, and prior experi-**
12 **ence of the offeror);**

13 **“(B) shall include cost or price to the**
14 **Government as an evaluation factor that**
15 **must be considered in the evaluation of**
16 **proposals; and**

17 **“(C) shall, at a minimum, disclose to**
18 **offerors whether all evaluation factors**
19 **other than price or cost, when combined,**
20 **are—**

21 **“(i) significantly more important**
22 **than price or cost,**

23 **“(ii) approximately equal in im-**
24 **portance to price or cost, or**

1 “(iii) significantly less important
2 than price or cost.

3 “(2) Nothing in this subsection prohibits
4 an agency from—

5 “(A) providing additional information
6 in a solicitation, including numeric
7 weights for all evaluation factors; or

8 “(B) stating in a solicitation that
9 award will be made to the offeror that
10 meets the solicitation’s mandatory re-
11 quirements at the lowest price or cost.”.

12 **(b) EVALUATION AND AWARD.—Section 303B**
13 **of the Federal Property and Administrative**
14 **Services Act of 1949 (41 U.S.C. 253b) is amend-**
15 **ed—**

16 **(1) in subsection (a) by inserting “and**
17 **award a contract” after “competitive pro-**
18 **posals”;**

19 **(2) in subsection (c) in the second**
20 **sentence by inserting “in accordance**
21 **with subsection (a)” after “shall evaluate**
22 **the bids”;**

23 **(3) in subsection (d) by amending**
24 **paragraph (1) to read as follows:**

1 **“(1) The executive agency shall evaluate**
2 **competitive proposals in accordance with**
3 **subsection (a) and may award a contract—**

4 **“(A) after discussions with the**
5 **offerors, if written or oral discussions**
6 **have been conducted with all responsible**
7 **offerors who submit proposals within the**
8 **competitive range; or**

9 **“(B) without discussions with the**
10 **offerors (other than discussions con-**
11 **ducted for the purpose of minor clarifica-**
12 **tion), if the solicitation included a state-**
13 **ment that proposals are intended to be**
14 **evaluated, and award made, without dis-**
15 **cussions, unless discussions are deter-**
16 **mined to be necessary.”; and**

17 **(4) in subsection (d) by striking para-**
18 **graphs (2) and (3) and by redesignating**
19 **paragraph (4) as paragraph (2).**

20 **(c) APPLICATION.—**

21 **(1) IN GENERAL.—Except as provided**
22 **in paragraph (2), the amendments made**
23 **by this section shall apply to—**

24 **(A) solicitations for sealed bids or**
25 **competitive proposals issued after**

1 the end of the 180-day period begin-
2 ning on the date of the enactment of
3 this Act; and

4 (B) contracts awarded pursuant
5 to those solicitations.

6 (2) EARLIER APPLICATION.—The head of
7 an agency may apply the amendments
8 made by this section to solicitations is-
9 sued before the end of the period re-
10 ferred to in paragraph (1). The head of
11 the agency shall publish in the Federal
12 Register notice of any such earlier date
13 of application before the beginning of the
14 10-day period ending on that date.

15 SEC. 203. CERTIFIED COST OR PRICING DATA THRESHOLD.

16 (a) CERTIFYING DATA.—

17 (1) AFFECTED CONTRACTS.—Section
18 304(d) of the Federal Property and Ad-
19 ministrative Services Act of 1949 (41
20 U.S.C. 254(d)) is amended—

21 (A) by striking out “\$100,000” each
22 place it appears and inserting in lieu
23 thereof “the cost or pricing data
24 threshold”; and

1 **(B) by adding at the end the fol-**
2 **lowing new paragraph:**

3 **“(6) For the purposes of this subsection,**
4 **the term ‘the cost or pricing data threshold’**
5 **means \$500,000, or, after December 31, 1995,**
6 **\$100,000.”.**

7 **(2) APPLICATION.—The amendments**
8 **made by this subsection shall apply to—**

9 **(A) prime contracts, or sub-**
10 **contracts (without regard to the date**
11 **on which the associated prime con-**
12 **tract was awarded), entered into**
13 **after the date on which the Federal**
14 **Acquisition Regulation is promul-**
15 **gated pursuant to section 204; and**

16 **(B) changes or modifications to**
17 **prime contracts or subcontracts when**
18 **those changes or modifications are**
19 **entered into after the date on which**
20 **a final revision of the Federal Acqui-**
21 **sition Regulation is issued pursuant**
22 **to section 204.**

23 **(3) MODIFICATION.—Upon the request**
24 **of a contractor, the head of an agency**
25 **may modify a contract to reflect the dol-**

1 **lar thresholds set forth in the revision to**
2 **the Federal Acquisition Regulation is-**
3 **ssued pursuant to section 204. Any such**
4 **modification shall be made without re-**
5 **quiring consideration.**

6 **(b) REGULATIONS FOR BELOW-THRESHOLD**
7 **PROCUREMENTS.—**

8 **(1) TYPE OF PROCUREMENTS.—The Ad-**
9 **ministrator of General Services, in con-**
10 **sultation with the Administrator for Fed-**
11 **eral Procurement Policy, shall prescribe**
12 **regulations identifying the type of pro-**
13 **curements for which contracting officers**
14 **should consider requiring the submission**
15 **of certified cost or pricing data under**
16 **section 304(d) of the Federal Property**
17 **and Administrative Services Act of 1949**
18 **(41 U.S.C 254).**

19 **(2) TYPES OF INFORMATION.—The Ad-**
20 **ministrator of General Services, in con-**
21 **sultation with the Administrator for Fed-**
22 **eral Procurement Policy, shall prescribe**
23 **regulations concerning the types of infor-**
24 **mation that offerors may be required to**
25 **submit for a contracting officer to con-**

1 sider in determining whether the price of
2 a procurement to the Government is fair
3 and reasonable when certified cost or
4 pricing data are not required to be sub-
5 mitted under section 304(d) of such Act
6 because the price of the procurement to
7 the United States is not expected to ex-
8 ceed \$500,000. Such information, at a
9 minimum, shall include appropriate in-
10 formation on the prices at which such
11 offeror has previously sold the same or
12 similar products.

13 (3) DEADLINE.—The regulations re-
14 quired under this subsection shall be pre-
15 scribed no later than 6 months after the
16 date of the enactment of this Act.

17 (c) REPEAL OF COMMERCIAL PRICING RE-
18 QUIREMENTS.—

19 (1) REPEAL.—Section 303E of the Fed-
20 eral Property and Administrative Serv-
21 ices Act of 1949 (41 U.S.C. 253e) is re-
22 pealed.

23 (2) CLERICAL AMENDMENT.—The first
24 section of the Federal Property and Ad-
25 ministrative Services Act of 1949 is

1 **amended in the table of contents by strik-**
2 **ing the item relating to section 303E.**

3 **(d) REVIEW OF AMENDMENTS.—**

4 **(1) IN GENERAL.—After the amend-**
5 **ments made by subsections (a) and (c)**
6 **have been in effect for 1 year, the Comp-**
7 **troller General shall conduct a review of**
8 **the effects of the amendments. The**
9 **Comptroller General shall coordinate**
10 **that review, insofar as possible, with the**
11 **review conducted by the Inspector Gen-**
12 **eral of the Department of Defense pursu-**
13 **ant to section 803(b) of the National De-**
14 **fense Authorization Act for Fiscal Year**
15 **1991 (Public Law 101-510).**

16 **(2) FACTORS CONSIDERED.—The review**
17 **conducted under paragraph (1) shall ad-**
18 **dress whether the amendments made by**
19 **subsections (a) and (c) have improved the**
20 **acquisition process in terms of reduced**
21 **paperwork, financial or other savings to**
22 **the Government, an increase in the num-**
23 **ber of contractors participating in the**
24 **contracting process, and the adequacy of**
25 **information available to contracting offi-**

1 **cers in cases in which certified cost or**
2 **pricing data are not required.**

3 **(3) REPORT.—Not later than the date**
4 **on which the President submits the budg-**
5 **et for fiscal year 1996 to the Congress**
6 **pursuant to section 1105 of title 31, Unit-**
7 **ed States Code, the Comptroller General**
8 **shall submit to the Congress a report on**
9 **the review conducted under paragraph**
10 **(1). The report shall include the com-**
11 **ments of the Administrator for Federal**
12 **Procurement Policy and the Adminis-**
13 **trator of General Services.**

14 **SEC. 204. REVISION OF FEDERAL ACQUISITION REGULA-**
15 **TION; EFFECTIVE DATE.**

16 **(a) REVISION OF FAR.—Unless otherwise**
17 **specifically provided in this title, not later**
18 **than 180 days after the date of the enactment**
19 **of this Act, the Federal Acquisition Regula-**
20 **tion issued under section 25(c) of the Office of**
21 **Federal Procurement Policy Act (41 U.S.C.**
22 **421(c)) shall be revised to reflect the amend-**
23 **ments made by sections 201, 202, 203(a) and**
24 **(c), and 301.**

1 **(b) EFFECTIVE DATE.—Unless otherwise**
2 **specifically provided in this title, the amend-**
3 **ments made by this title and section 301 shall**
4 **be effective 180 days after the date of the en-**
5 **actment of this Act.**

6 **(c) STANDARDS AND REQUIREMENTS FOR**
7 **COST AND PRICE AS EVALUATION FACTORS.—**

8 **(1) IN GENERAL.—The Federal Acquisi-**
9 **tion Regulation, as revised pursuant to**
10 **subsection (a), shall establish standards**
11 **and requirements for the consideration**
12 **of cost and price to the Government as**
13 **evaluation factors under the amendments**
14 **made by sections 202(a)(4) and 301.**

15 **(2) STANDARDS AND REQUIREMENTS.—**
16 **Standards and requirements established**
17 **under paragraph (1) shall be adequate to**
18 **ensure that, to the maximum extent prac-**
19 **ticable consistent with the needs of the**
20 **Federal Government in conducting pro-**
21 **curements—**

22 **(A) cost or price is an evaluation**
23 **factor of sufficient weight to affect**
24 **each source selection decision; and**

1 **(B) competition among competing**
2 **offerors is affected by cost or price.**

3 **TITLE III—AMENDMENTS RELAT-**
4 **ING TO TITLE 10, UNITED**
5 **STATES CODE**

6 **SEC. 301. SOURCE SELECTION FACTORS.**

7 **Paragraph (3) of section 2305(a) of title 10,**
8 **United States Code, is amended to read as fol-**
9 **lows:**

10 **“(3)(A) In prescribing the evaluation fac-**
11 **tors to be included in each solicitation for**
12 **competitive proposals, the head of an agen-**
13 **cy—**

14 **“(i) shall clearly establish the relative**
15 **importance assigned to the evaluation**
16 **factors and subfactors, including the**
17 **quality of the product or services to be**
18 **provided (including technical capability,**
19 **management capability, and prior experi-**
20 **ence of the offeror);**

21 **“(ii) shall include cost or price to the**
22 **Government as an evaluation factor that**
23 **must be considered in the evaluation of**
24 **proposals; and**

1 “(iii) shall, at a minimum, disclose to
2 offerors whether all evaluation factors
3 other than price or cost, when combined,
4 are—

5 “(I) significantly more important
6 than price or cost,

7 “(II) approximately equal in im-
8 portance to price or cost, or

9 “(III) significantly less important
10 than price or cost.

11 “(B) Nothing in this paragraph prohibits
12 an agency from—

13 “(i) providing additional information
14 in a solicitation, including numeric
15 weights for all evaluation factors; or

16 “(ii) stating in a solicitation that
17 award will be made to the offeror that
18 meets the solicitation’s mandatory re-
19 quirements at the lowest price or cost.”.

20 SEC. 302. TRUTH IN NEGOTIATIONS.

21 Section 2306a(c) of title 10, United States
22 Code, is amended to read as follows:

23 “(c) AUTHORITY TO REQUIRE COST OR PRIC-
24 ING DATA.—When cost or pricing data need not
25 be required to be submitted pursuant to sub-

1 **section (b), such data shall not be required to**
 2 **be submitted unless the head of the agency**
 3 **determines that such data are necessary for**
 4 **the evaluation by the agency of the reason-**
 5 **ableness of the price of the contract or sub-**
 6 **contract. In any case in which the head of the**
 7 **agency requires such data to be submitted**
 8 **under this subsection, the head of the agency**
 9 **shall document in writing the reasons for**
 10 **such requirement.”.**

11 **TITLE IV—BROOKS ACT** 12 **AMENDMENTS**

13 **SEC. 401. SHORT TITLES OF CERTAIN PROVISIONS OF FED-**
 14 **ERAL PROPERTY AND ADMINISTRATIVE**
 15 **SERVICES ACT OF 1949.**

16 **(a) AUTOMATIC DATA PROCESSING EQUIP-**
 17 **MENT PROVISIONS.—Section 111 of the Federal**
 18 **Property and Administrative Services Act of**
 19 **1949 (40 U.S.C. 759) is amended by adding at**
 20 **the end the following new subsection:**

21 **“(i) This section may be cited as the**
 22 **‘Brooks Automatic Data Processing Act’.”.**

23 **(b) ARCHITECTURAL AND ENGINEERING SERV-**
 24 **ICES PROVISIONS.—Title IX of the Federal**
 25 **Property and Administrative Services Act of**

1 **1949 (40 U.S.C. 541–544) is amended by adding**
2 **at the end the following new section:**

3 **“SEC. 905. SHORT TITLE.**

4 **“This title may be cited as the ‘Brooks**
5 **Architect-Engineers Act’.”.**

6 **SEC. 402. DISMISSAL; AWARD OF COSTS.**

7 **Section 111(f)(4) of the Federal Property**
8 **and Administrative Services Act of 1949 (40**
9 **U.S.C. 759(f)(4)) is amended by striking sub-**
10 **paragraph (C) and inserting the following:**

11 **“(C) The board may dismiss a protest that**
12 **the board determines—**

13 **“(i) is frivolous,**

14 **“(ii) has been brought in bad faith, or**

15 **“(iii) on its face does not state a valid**
16 **basis for protest.**

17 **“(D) If a party violates or fails to comply**
18 **in good faith with, or causes a violation of or**
19 **failure to comply in good faith with, an order**
20 **or decision of the board, the board may re-**
21 **quire that party to pay to any other party the**
22 **amount of any reasonable costs, including at-**
23 **torney’s fees, incurred by the other party in**
24 **seeking compliance with such order or deci-**
25 **sion.”.**

1 **SEC. 403. OVERSIGHT OF ACQUISITION OF AUTOMATIC**
2 **DATA PROCESSING EQUIPMENT BY FEDERAL**
3 **AGENCIES.**

4 **Section 111 of the Federal Property and**
5 **Administrative Services Act of 1949 (40 U.S.C.**
6 **759), as amended by this Act, is further**
7 **amended by inserting after subsection (g) the**
8 **following new subsection:**

9 **“(h)(1) The Administrator shall collect and**
10 **compile data from Federal agencies regarding**
11 **the procurement of automatic data processing**
12 **equipment under this section. That data shall**
13 **include, at a minimum, with regard to those**
14 **procurements specified by the Administrator**
15 **in regulation—**

16 **“(A) the procuring agency,**

17 **“(B) the contractor,**

18 **“(C) the automatic data processing**
19 **equipment and services procured,**

20 **“(D) the manufacturer of the equip-**
21 **ment procured,**

22 **“(E) the amount of the contract,**

23 **“(F) the type of contract used,**

24 **“(G) the extent of competition for**
25 **award,**

26 **“(H) compatibility restrictions, and**

1 **“(I) significant modifications of the**
2 **contract.**

3 **“(2) The head of each Federal agency shall**
4 **report to the Administrator in accordance**
5 **with regulations issued by the Administrator**
6 **all information required to be compiled by the**
7 **Administrator under paragraph (1).**

8 **“(3) The Administrator—**

9 **“(A) shall carry out a systematic re-**
10 **view and conduct periodic audits of in-**
11 **formation received under this subsection;**

12 **“(B) shall use such information as ap-**
13 **propriate to determine the compliance of**
14 **Federal agencies with the requirements**
15 **of this section; and**

16 **“(C) may suspend the delegation to an**
17 **agency of authority to lease and purchase**
18 **automatic data processing equipment**
19 **upon any substantial failure by the head**
20 **of the agency to report to the Adminis-**
21 **trator in accordance with this subsection.**

22 **“(4) The Administrator shall, upon receipt**
23 **of information that a Federal agency has**
24 **failed to comply with the terms of any delega-**
25 **tion of authority to lease or purchase auto-**

1 matic data processing equipment or has failed
2 to comply with any applicable law or regula-
3 tion, take appropriate corrective action.

4 “(5) Data collected pursuant to this sec-
5 tion shall be drawn from existing Federal
6 agency information resources, and no new or
7 additional information reporting require-
8 ments may be imposed on offerors or contrac-
9 tors for that purpose.”.

10 SEC. 404. EFFECTIVE DATE.

11 The amendments made by this title shall
12 take effect on the date which is 180 days after
13 the date of the enactment of this title.

14 **TITLE V—MISCELLANEOUS**
15 **PROVISIONS**

16 SEC. 501. PROCUREMENT PROTEST SYSTEM IMPROVE-
17 MENTS.

18 (a) GAO RECOMMENDATIONS ON PRO-
19 TESTS.—Section 3554 of title 31, United States
20 Code, is amended—

21 (1) in subsection (b) by adding at the
22 end the following new paragraph:

23 “(3) The head of the procuring activity re-
24 sponsible for the solicitation, proposed
25 award, or award of a contract shall report to

1 **the Comptroller General if the Federal agency**
2 **has not fully implemented recommendations**
3 **of the Comptroller General under this sub-**
4 **section with respect to that contract within 60**
5 **days after receiving the recommendations, by**
6 **not later than the end of that 60-day period.”;**

7 **(2) in subsection (c)(1) by striking**
8 **“declare an appropriate interested party**
9 **to be entitled to” and inserting “rec-**
10 **ommend that the Federal agency con-**
11 **ducting the procurement pay to an ap-**
12 **propriate interested party”;**

13 **(3) by amending subsection (c)(2) to**
14 **read as follows:**

15 **“(2) If the Comptroller General rec-**
16 **ommends under paragraph (1) that a Federal**
17 **agency pay an amount of costs to an inter-**
18 **ested party, the Federal agency shall—**

19 **“(A) pay the amount promptly out of**
20 **amounts appropriated by section 1304 of**
21 **this title for the payment of judgments,**
22 **and reimburse that appropriation ac-**
23 **count out of available funds or by obtain-**
24 **ing additional appropriations for that**
25 **purpose, or**

1 **“(B) report to the Comptroller Gen-**
2 **eral promptly why the recommendation**
3 **will not be followed by the agency.”.**

4 **(4) by adding at the end of subsection**
5 **(c) the following new paragraph:**

6 **“(3) An interested party to which the**
7 **Comptroller General has recommended that**
8 **costs be paid under paragraph (1) and the**
9 **Federal agency recommended to pay those**
10 **costs shall attempt to reach agreement on the**
11 **amount of the costs to be paid, but if they are**
12 **unable to agree, a party may request that the**
13 **Comptroller General recommend the amount**
14 **of the costs to be paid.”; and**

15 **(5) by amending subsection (e) to**
16 **read as follows:**

17 **“(e)(1) The Comptroller General shall re-**
18 **port promptly to the Committee on Govern-**
19 **ment Operations and the Committee on Ap-**
20 **propriations of the House of Representatives**
21 **and to the Committee on Governmental Af-**
22 **fairs and the Committee on Appropriations of**
23 **the Senate in any case in which a Federal**
24 **agency fails to implement fully a rec-**
25 **ommendation of the Comptroller General**

1 under subsection (b) or (c). The report shall
2 include—

3 “(A) a comprehensive review of the
4 pertinent procurement, including the cir-
5 cumstances of the failure of the Federal
6 agency to implement a recommendation
7 of the Comptroller General, and

8 “(B) a recommendation regarding
9 whether, in order to correct inequity or
10 to preserve the integrity of the procure-
11 ment process, the Congress should con-
12 sider—

13 “(i) private relief legislation;

14 “(ii) legislative rescission or can-
15 cellation of funds;

16 “(iii) further investigation by the
17 Congress; or

18 “(iv) other action.

19 “(2) Not later than January 31 of each
20 year, the Comptroller General shall transmit
21 to the Congress a summary report describing
22 each instance in which a Federal agency did
23 not fully implement a recommendation of the
24 Comptroller General under subsection (b) or
25 (c) during the preceding year.”.

1 **(b) RATIFICATION OF PRIOR AWARDS.—**
2 **Amounts to which the Comptroller General**
3 **declared an interested party to be entitled**
4 **under section 3554 of title 31, United States**
5 **Code, as in effect immediately before the en-**
6 **actment of this Act, shall, if not paid or other-**
7 **wise satisfied by the Federal agency con-**
8 **cerned before the date of the enactment of**
9 **this Act, be paid promptly from the appro-**
10 **priation made by section 1304 of title 31, Unit-**
11 **ed States Code, for the payment of judgments,**
12 **and the Federal agency shall reimburse that**
13 **appropriation account out of available funds**
14 **or by obtaining additional appropriations for**
15 **that purpose.**

16 **(c) EFFECTIVE DATE.—The amendments**
17 **made by subsection (a) shall take effect at the**
18 **end of the 45-day period beginning on the**
19 **date of the enactment of this Act.**

20 **(d) RESTRICTION ON ACCESS TO CERTAIN IN-**
21 **FORMATION.—Section 3553(f) of title 31, United**
22 **States Code, is amended—**

23 **(1) by inserting “(1)” after “(f)”; and**
24 **(2) by adding at the end the follow-**
25 **ing:**

1 **“(2)(A) The Comptroller General may**
2 **issue protective orders which establish terms,**
3 **conditions, and restrictions for the provision**
4 **of any document to a person under paragraph**
5 **(1), that prohibit or restrict the disclosure by**
6 **the person of information described in sub-**
7 **paragraph (C) that is contained in such a doc-**
8 **ument.**

9 **“(B) The penalties specified under section**
10 **27(i) of the Office of Federal Procurement Pol-**
11 **icy Act shall apply to the disclosure of infor-**
12 **mation described in subparagraph (C) in vio-**
13 **lation of a term, condition, or restriction in a**
14 **protective order under this paragraph by a**
15 **person that is subject to the protective order.**

16 **“(C) Information referred to in subpara-**
17 **graphs (A) and (B) is procurement sensitive**
18 **information, trade secrets, or other propri-**
19 **etary or confidential research, development,**
20 **or commercial information.**

21 **“(D) A protective order under this para-**
22 **graph shall not be considered to authorize the**
23 **withholding of any document or information**
24 **from the Congress or an executive agency.”.**

1 **SEC. 502. POST-AWARD DEBRIEFINGS.**

2 **(a) AMENDMENT TO OFFICE OF FEDERAL**
3 **PROCUREMENT POLICY ACT.—The Office of Fed-**
4 **eral Procurement Policy Act (41 U.S.C. et seq.)**
5 **is amended by adding at the end the following**
6 **new section:**

7 **“SEC. 29. POST-AWARD DEBRIEFINGS.**

8 **“(a) DEBRIEFING GUIDELINES.—The Federal**
9 **Acquisition Regulation shall be revised to in-**
10 **clude guidelines for the debriefing of unsuc-**
11 **cessful offerors for any contract for an**
12 **amount in excess of the small purchase**
13 **threshold which was awarded on a basis**
14 **other than price alone. Such guidelines shall**
15 **require that such a debriefing—**

16 **“(1) shall occur if a written request**
17 **by an unsuccessful offeror for a contract**
18 **is submitted within 5 days after the date**
19 **of the award of the contract;**

20 **“(2) shall be completed within 5 days**
21 **after the date of the submission of such a**
22 **request; and**

23 **“(3) to the maximum extent prac-**
24 **ticable, shall include at least the follow-**
25 **ing:**

1 “(A) A detailed review of the
2 offeror’s proposal in relation to the
3 evaluation factors and subfactors
4 specified in the solicitation for the
5 contract, including identification of
6 any weaknesses and strengths of the
7 proposal, results of any past perform-
8 ance analyses, and cost realism as-
9 sessment.

10 “(B) A description of the rationale
11 for the award of the contract.

12 “(C) The overall evaluated cost
13 and combined technical and cost
14 scores of the awardee and the de-
15 briefed offeror, and the technical
16 point scores of the awardee and the
17 debriefed offeror.

18 “(D) The overall ranking of all
19 offerors.

20 “(b) INFORMATION NOT PROVIDED.—A de-
21 briefing under subsection (a) shall not make
22 point-by-point comparisons with other
23 offerors’ proposals and shall not disclose any
24 information that is not subject to disclosure

1 under section 552 of title 5, United States
2 Code, including information relating to—

3 “(1) trade secrets;

4 “(2) privileged or confidential manu-
5 facturing processes and techniques; and

6 “(3) commercial and financial infor-
7 mation that is privileged or confidential,
8 including cost breakdowns, profit, indi-
9 rect cost rates, and similar information.

10 “(c) NOTIFICATION OF DISCLOSURE.—Each
11 solicitation for contracts subject to subsection
12 (a) shall notify participating offerors that the
13 categories of information described in sub-
14 section (a)(3) may be disclosed by the Govern-
15 ment in post-award debriefings.”.

16 (b) PERIOD FOR FILING PROTEST.—

17 (1) IN GENERAL.—Section 3553(d) of
18 title 31, United States Code, is amended
19 by adding at the end the following:

20 “(3)(A) In the case of protest submitted by
21 a person provided a debriefing with respect
22 to a contract, paragraph (1) shall be applied
23 by substituting for ‘but within 10 days of the
24 date of the contract award’ the following: ‘but
25 before the later of the date that is 10 days

1 after the date of the contract award or the
2 date that is 3 working days after the date of
3 completion of a debriefing regarding the con-
4 tract’.

5 “(B) In this paragraph the term ‘debrief-
6 ing’ means a debriefing under the guidelines
7 required under section 29 of the Office of Fed-
8 eral Procurement Policy Act.”.

9 (2) **BROOKS AUTOMATIC DATA PROCESS-**
10 **ING ACT PROTESTS.—Section 111(f)(3) of the**
11 **Federal Property and Administrative**
12 **Services Act of 1949 (40 U.S.C. 749(f)(3)) is**
13 **amended by adding at the end the follow-**
14 **ing:**

15 “(C)(i) In the case of protest filed by a per-
16 son provided a debriefing with respect to a
17 contract, subparagraph (A) shall be applied
18 by substituting for ‘but within 10 days after
19 the contract award’ the following: ‘but before
20 the later of the date that is 10 days after the
21 date of the contract award or the date that is
22 3 working days after the date of completion
23 of a debriefing regarding the contract’.

24 “(ii) In this subparagraph the term ‘de-
25 briefing’ means a debriefing under the guide-

1 **lines required under section 29 of the Office**
2 **of Federal Procurement Policy Act.”.**

3 **(c) ISSUANCE OF REVISION.—The Federal**
4 **Acquisition Regulatory Council shall issue a**
5 **final revision of the Federal Acquisition Regu-**
6 **lation implementing section 29 of the Office of**
7 **Federal Procurement Policy Act, as added by**
8 **subsection (a), not later than 180 days after**
9 **the date of the enactment of this Act.**

10 **(d) APPLICATION.—Section 29 of the Office**
11 **of Federal Procurement Policy Act, as added**
12 **by subsection (a), shall apply with respect to**
13 **solicitations for contracts issued after the ex-**
14 **piration of the 180-day period beginning on**
15 **the date of the enactment of this Act.**

16 **SEC. 503. USE OF SMALL PURCHASE PROCEDURES FOR**
17 **PROCUREMENTS CONDUCTED THROUGH**
18 **FEDERAL ACQUISITION COMPUTER NET-**
19 **WORK SYSTEMS; IMPLEMENTATION OF SYS-**
20 **TEMS.**

21 **(a) INCREASE IN SMALL PURCHASE THRESH-**
22 **OLD.—**

23 **(1) IN GENERAL.—Section 4 of the Of-**
24 **fice of Federal Procurement Policy Act**

1 **(41 U.S.C. 403), as amended by section**
2 **122(a), is further amended—**

3 **(A) by striking paragraph (11) and**
4 **inserting the following:**

5 **“(11) the term ‘small purchase thresh-**
6 **old’ means—**

7 **“(A) \$25,000, except as provided in**
8 **subparagraphs (B) and (C);**

9 **“(B) \$50,000, in the case of a pro-**
10 **curement—**

11 **“(i) that is conducted by a**
12 **procuring activity that has imple-**
13 **mented FACNET system architec-**
14 **tural capabilities in accordance**
15 **with the requirements under sec-**
16 **tion 30(f)(1)(A) and (B)(i); and**

17 **“(ii) in which notices of solici-**
18 **tation for all contracting opportu-**
19 **nities are issued through a**
20 **FACNET system; or**

21 **“(C) \$100,000, in the case of a pro-**
22 **curement—**

23 **“(i) that is conducted by a**
24 **procuring activity that has imple-**
25 **mented FACNET system architec-**

1 **tural capabilities in accordance**
2 **with the requirements under sec-**
3 **tion 30(f)(1)(A) and (B)(i), (ii), (iii),**
4 **and (iv); and**

5 **“(ii) in which—**

6 **“(I) notices of solicitation**
7 **for all contracting opportuni-**
8 **ties are issued through a**
9 **FACNET system,**

10 **“(II) responses to solicita-**
11 **tions and requests for infor-**
12 **mation may be submitted to**
13 **the procuring activity**
14 **through such system,**

15 **“(III) information pursu-**
16 **ant to those requests is avail-**
17 **able through such system,**

18 **“(IV) orders are made**
19 **through such system, and**

20 **“(V) public notice of**
21 **awards is provided through**
22 **such system;**

23 **except that the dollar amount in each of**
24 **subparagraphs (A), (B), and (C) shall be**
25 **adjusted on October 1 of each year divis-**

1 **ible by 5 to the equivalent amount in con-**
2 **stant fiscal year 1993 dollars (rounded to**
3 **the nearest \$1,000);”**

4 **(B) by striking the period at the**
5 **end of paragraph (12) and inserting “;**
6 **and”; and**

7 **(C) by adding at the end the fol-**
8 **lowing new paragraph:**

9 **“(13) the term ‘FACNET system’**
10 **means such a system developed in ac-**
11 **cordance with the FACNET system archi-**
12 **tecture established by the Administrator**
13 **under section 30.”.**

14 **(2) EFFECTIVE DATE.—The amendments**
15 **made by paragraph (1) shall take effect**
16 **on, and apply to solicitations made and**
17 **orders placed on or after, the expiration**
18 **of the 60-day period beginning on the**
19 **date of issuance in final form of revisions**
20 **to the Federal Acquisition Regulation**
21 **under subsection (b).**

22 **(3) INTERIM RULE.—Notwithstanding**
23 **paragraphs (1) and (2), during the 5-year**
24 **period beginning on the date of the issu-**
25 **ance in final form of revisions to the Fed-**

1 **eral Acquisition Regulation under sub-**
2 **section (b), procuring activities shall con-**
3 **tinue to report, pursuant to section 19(d)**
4 **of the Office of Federal Procurement Pol-**
5 **icy Act (41 U.S.C. 417(d)), procurement**
6 **awards with a dollar value of at least**
7 **\$25,000, but less than \$100,000, in con-**
8 **formity with the procedures for the re-**
9 **porting of a contract award in excess of**
10 **\$25,000 in effect on May 24, 1993.**

11 **(b) IMPROVED SMALL PURCHASE PROCE-**
12 **DURES.—**

13 **(1) REVISION OF FAR.—The Federal Ac-**
14 **quisition Regulation shall be revised to**
15 **ensure that—**

16 **(A) procuring activities of execu-**
17 **tive agencies comply with the re-**
18 **quirements of section 8(a) of the**
19 **Small Business Act (15 U.S.C. 637(a))**
20 **and section 2323 of title 10, United**
21 **States Code, in awarding any con-**
22 **tract with a price exceeding \$25,000;**

23 **(B) the authority under part**
24 **13.106(a)(1) of the Federal Acquisition**
25 **Regulation (48 C.F.R. 13.106(a)(1)), as**

1 **in effect on May 19, 1993, to make**
2 **purchases without securing competi-**
3 **tive quotations does not apply to any**
4 **purchases with a price exceeding**
5 **\$2,500; and**

6 **(C) procuring activities of execu-**
7 **tive agencies comply with the re-**
8 **quirements of section 15(j) of the**
9 **Small Business Act (15 U.S.C. 644), re-**
10 **lating to the small business reserve,**
11 **in awarding any contract with a price**
12 **below the small purchase threshold.**

13 **(2) NOTICE REQUIRED REGARDING ORAL**
14 **SOLICITATIONS.—Section 18(a)(1)(B) of the**
15 **Office of Federal Procurement Policy Act**
16 **(41 U.S.C. 416(a)(1)(B)) is amended in the**
17 **matter preceding clause (i)—**

18 **(A) by inserting “(including orally**
19 **or by any other means)” after “in-**
20 **tending to solicit”; and**

21 **(B) by inserting after “ten days”**
22 **the following: “before contract award**
23 **(except for any procurement in which**
24 **public notice of contract opportuni-**
25 **ties for the acquisition of property or**

1 **services by a procuring activity of an**
2 **executive agency is performed**
3 **through a FACNET system)”.**

4 **(3) PARTICIPATION BY ALL RESPONSIBLE**
5 **SMALL BUSINESS CONCERNS.—Section 18 of**
6 **the Office of Federal Procurement Policy**
7 **Act (41 U.S.C. 416) is amended by adding**
8 **at the end the following:**

9 **“(e) An executive agency intending to so-**
10 **licit offers for a contract for which a notice**
11 **of solicitation is required to be posted under**
12 **subsection (a)(1)(B) shall ensure that all small**
13 **business concerns are permitted to respond to**
14 **solicitations for the contract within the time**
15 **specified in the solicitations.”.**

16 **(c) PERFORMANCE TEST AND REPORT.—**

17 **(1) PERFORMANCE TEST.—The Comp-**
18 **troller General of the United States shall**
19 **monitor and collect data on the results of**
20 **the amendments made by subsection**
21 **(a)(1), to ascertain the effects of the**
22 **amendments on the participation of small**
23 **business concerns (including small busi-**
24 **ness concerns owned and controlled by**
25 **socially and economically disadvantaged**

1 individuals) in procurement awards of
2 less than \$100,000 and the benefits and
3 detriments, if any, to the buying activi-
4 ties of the various Executive agencies.

5 (2) DATA TO BE COLLECTED.—Data col-
6 lected under paragraph (1) shall include
7 data regarding whether the amendments
8 made by subsection (a)(1) have improved
9 the acquisition process in terms of re-
10 duced paperwork, financial or other sav-
11 ings to the Government, and any increase
12 in the number of contractors participat-
13 ing in the contracting process.

14 (3) PERIOD.—Data shall be collected
15 for purposes of paragraph (1) during the
16 period beginning with the first full fiscal
17 year quarter after the effective date of
18 the amendments made by subsection
19 (a)(1) and ending September 30, 1996.

20 (4) REPORT.—By March 1, 1997, the
21 Comptroller General of the United States
22 shall report to the Committee on Govern-
23 ment Operations of the House of Rep-
24 resentatives, the Committee on Govern-
25 mental Affairs of the Senate, and the

1 **Committees on Small Business of the**
2 **House of Representatives and the Senate**
3 **on the effects of the increase in the small**
4 **purchase threshold made by the amend-**
5 **ments made by subsection (a)(1).**

6 **(d) FUNCTIONS OF ADMINISTRATOR FOR FED-**
7 **ERAL PROCUREMENT POLICY.—Section 6(d) of**
8 **the Office of Federal Procurement Policy Act**
9 **(41 U.S.C. 405(d)) is amended—**

10 **(1) in paragraph (7) by striking “and”**
11 **after the semicolon at the end; and**

12 **(2) by redesignating paragraph (8) as**
13 **paragraph (10) and inserting after para-**
14 **graph (7) the following:**

15 **“(8) developing policies, in consulta-**
16 **tion with the Administrator of the Small**
17 **Business Administration, that ensure that**
18 **small businesses and small businesses**
19 **owned and controlled by socially and eco-**
20 **nomically disadvantaged persons are pro-**
21 **vided with the maximum practicable op-**
22 **portunities to participate in procure-**
23 **ments that are conducted below the small**
24 **purchase threshold;**

1 **“(9) developing policies that will pro-**
2 **mote achievement of goals for participa-**
3 **tion by small businesses and small busi-**
4 **nesses owned and controlled by socially**
5 **and economically disadvantaged individ-**
6 **uals; and”.**

7 **(e) IMPLEMENTATION OF ELECTRONIC DATA**
8 **INTERCHANGE FOR PROCUREMENT INFORMA-**
9 **TION.—The Office of Federal Procurement Pol-**
10 **icy Act (41 U.S.C. 401 et seq.) is further amend-**
11 **ed by adding after section 29 (as added by sec-**
12 **tion 502) the following:**

13 **“SEC. 30. ELECTRONIC INTERCHANGE OF PROCUREMENT**
14 **INFORMATION.**

15 **“(a) IN GENERAL.—The Administrator, in**
16 **consultation with the Office of Information**
17 **and Regulatory Affairs, shall establish a pro-**
18 **gram and assign a program manager for, and**
19 **provide overall direction of policy and leader-**
20 **ship in, the development, coordination, instal-**
21 **lation, operation, and completion of imple-**
22 **mentation by executive agencies, by not later**
23 **than 5 years after the date of the enactment**
24 **of the Federal Acquisition Improvement Act**
25 **of 1993, of a Federal Acquisition Computer**

1 **Network system architecture. Any system de-**
2 **veloped in accordance with this architecture**
3 **shall be known as a ‘FACNET system’. The**
4 **FACNET system architecture shall involve en-**
5 **abling technology and procurement elec-**
6 **tronic data interchange transaction sets. The**
7 **enabling technology shall consist of a com-**
8 **puter network, supporting data bases, and**
9 **standard interfaces that interconnect Govern-**
10 **ment automated systems to the network. The**
11 **procurement electronic data interchange**
12 **transaction sets shall facilitate the electronic**
13 **interchange of standard procurement infor-**
14 **mation between Government and industry**
15 **automated acquisition systems.**

16 **“(b) FUNCTIONS OF ADMINISTRATOR OF GEN-**
17 **ERAL SERVICES.—The Administrator of Gen-**
18 **eral Services shall do the following:**

19 **“(1) Provide technical support for**
20 **FACNET systems by doing the following:**

21 **“(A) Coordinate with the Adminis-**
22 **trator to facilitate the efficient and**
23 **widespread implementation of var-**
24 **ious FACNET systems by executive**
25 **agencies. This shall include interfac-**

1 **ing FACNET systems to other sys-**
2 **tems, such as the Government bank**
3 **card and Electronic Funds Transfer**
4 **payment systems.**

5 **“(B) Assist the Director of the Na-**
6 **tional Institute of Standards and**
7 **Technology in the development and**
8 **application of appropriate Federal In-**
9 **formation Processing Standards.**

10 **“(C) Prepare a technical plan for**
11 **coordinating the design, develop-**
12 **ment, implementation, operation, and**
13 **maintenance of the FACNET system**
14 **architecture. The plan shall include**
15 **roles and responsibilities, major mile-**
16 **stones, cost estimates, and perform-**
17 **ance requirements.**

18 **“(2) Ensure compliance with section**
19 **111 of the Federal Property and Adminis-**
20 **trative Services Act of 1949 in the imple-**
21 **mentation of FACNET systems by execu-**
22 **tive agencies, including by limiting the**
23 **scope of delegations under subsection (a)**
24 **of that section.**

1 **“(3) Evaluate progress by executive**
2 **agencies in implementing FACNET sys-**
3 **tems, and recommend changes in that im-**
4 **plementation to the program manager as-**
5 **signed by the Administrator under sub-**
6 **section (a).**

7 **“(4) Submit to the Congress, on the**
8 **date that is one year after the date of the**
9 **enactment of the Federal Acquisition Im-**
10 **provement Act of 1993 and on that date**
11 **in each of the 5 years thereafter, a report**
12 **on the overall progress by the executive**
13 **branch of the Government and by each**
14 **executive agency in implementing the**
15 **FACNET system architecture.**

16 **“(c) IMPLEMENTATION OF FACNET SYSTEMS**
17 **BY EXECUTIVE AGENCIES.—**

18 **“(1) IN GENERAL.—The head of each**
19 **executive agency shall cooperate with the**
20 **Administrator and the Administrator of**
21 **General Services to implement FACNET**
22 **systems for the agency.**

23 **“(2) DESIGNATION OF AGENCY PROGRAM**
24 **MANAGER.—**

1 **“(A) DESIGNATION.—The head of**
2 **each executive agency shall designate**
3 **a program manager to implement**
4 **FACNET systems for the agency and**
5 **otherwise implement this section.**

6 **“(B) FUNCTIONS.—A program man-**
7 **ger designated under this paragraph**
8 **for an executive agency shall—**

9 **“(i) report directly to the sen-**
10 **ior procurement executive des-**
11 **ignated for the agency under sec-**
12 **tion 16(4);**

13 **“(ii) be responsible for the**
14 **timely and cost-effective imple-**
15 **mentation of the FACNET system**
16 **architecture for the agency in a**
17 **manner that is responsive to the**
18 **procurement needs of the agency,**
19 **national business needs, and the**
20 **public’s interest in open govern-**
21 **ment;**

22 **“(iii) develop plans for phas-**
23 **ing-in the implementation of**
24 **FACNET systems for the procur-**
25 **ing activities of the executive**

1 **agency and phasing-out local net-**
2 **work systems that perform com-**
3 **parable procurement functions;**

4 **“(iv) participate in the inter-**
5 **agency development of standard**
6 **procurement electronic data**
7 **interchange transaction sets; and**

8 **“(v) in carrying out this sec-**
9 **tion, comply with guidelines is-**
10 **sued by the Administrator under**
11 **this section and program direc-**
12 **tives issued by the Administrator**
13 **of General Services under section**
14 **111 of the Federal Property and**
15 **Administrative Services Act of**
16 **1949.**

17 **“(d) FUNCTIONS OF NATIONAL INSTITUTE OF**
18 **STANDARDS AND TECHNOLOGY.—The Director of**
19 **the National Institute of Standards and Tech-**
20 **nology shall—**

21 **“(1) ensure that the FACNET system**
22 **architecture complies with Federal Infor-**
23 **mation Processing Standards;**

1 **“(2) issue additional standards for the**
2 **FACNET system architecture as nec-**
3 **essary; and**

4 **“(3) establish tests to facilitate the**
5 **aims of this section and support policies**
6 **established by the Administrator under**
7 **this section.**

8 **“(e) FUNCTIONS OF SMALL BUSINESS ADMIN-**
9 **ISTRATION.—The Administrator of the Small**
10 **Business Administration shall—**

11 **“(1) develop plans to coordinate and**
12 **promote the use of FACNET systems by**
13 **small businesses, that incorporate out-**
14 **reach efforts by the Small Business Ad-**
15 **ministration, agency Offices of Small and**
16 **Disadvantaged Business and Utilization,**
17 **Small Business Development Centers,**
18 **and other appropriate organizations; and**

19 **“(2) inform and provide consistent**
20 **and comprehensive FACNET system**
21 **training for small businesses.**

22 **“(f) FACNET SYSTEM COMPATIBILITY**
23 **STANDARDS.—**

24 **“(1) IN GENERAL.—The Administrator,**
25 **in consultation with the Office of Infor-**

1 **mation and Regulatory Affairs, the Ad-**
2 **ministrator of General Services, the Ad-**
3 **ministrator of the Small Business Admin-**
4 **istration, and the Director of the Na-**
5 **tional Institute of Standards and Tech-**
6 **nology, shall prescribe policies for ensur-**
7 **ing convenient and universal access to**
8 **FACNET systems, and shall develop a set**
9 **of system compatibility standards for**
10 **each FACNET system interface and**
11 **FACNET system support data base. The**
12 **system compatibility standards shall**
13 **specify the functional capabilities of each**
14 **FACNET system interface, and the mini-**
15 **um set of data elements of each**
16 **FACNET system support data base. The**
17 **system compatibility standards shall en-**
18 **sure that the following FACNET system**
19 **functions are satisfactorily performed by**
20 **each executive agency, executive agency**
21 **component, or procuring activity:**

22 **“(A) Provision of widespread pub-**
23 **lic notice of solicitations for contract**
24 **opportunities issued by the agency,**
25 **component, or activity and of orders**

1 to be made by the agency, component,
2 or activity below the small purchase
3 threshold.

4 “(B) Allowing private users to
5 electronically—

6 “(i) selectively access and re-
7 view solicitations issued by the
8 agency, component, or activity;

9 “(ii) respond to solicitations
10 issued by the agency, component,
11 or activity;

12 “(iii) receive orders from the
13 agency, component, or activity;
14 and

15 “(iv) access information on
16 contract awards made by the
17 agency, component, or activity.

18 “(2) BINDING STANDARDS.—The
19 FACNET system interface and FACNET
20 system support data base of each procur-
21 ing activity shall comply with the system
22 compatibility standards developed under
23 paragraph (1), except to the extent the
24 Administrator has waived application of

1 **such standards to the activity under**
2 **paragraph (3).**

3 **“(3) WAIVERS.—**

4 **“(A) IN GENERAL.—The Adminis-**
5 **trator may, in writing, waive the ap-**
6 **plication of any system compatibility**
7 **standard to a procuring activity if the**
8 **Administrator—**

9 **“(i) determines that compli-**
10 **ance with the standard by the**
11 **procuring activity would ad-**
12 **versely affect the accomplishment**
13 **of the mission of the activity or**
14 **cause a major adverse financial**
15 **impact on the activity which is**
16 **not offset by Government-wide**
17 **savings; and**

18 **“(ii) approves a plan, devel-**
19 **oped by the procuring activity,**
20 **for complying with the standard**
21 **by not later than 1 year after the**
22 **issuance of the waiver.**

23 **“(B) AUTHORITY NON-DELEGABLE.—**

24 **The authority of the Administrator to**

1 **issue waivers under this paragraph**
2 **may not be delegated.**

3 **“(C) REQUEST FOR WAIVER.—A**
4 **waiver under this paragraph may be**
5 **issued by the Administrator only**
6 **after receipt of a request for the**
7 **waiver submitted by the program**
8 **manager designated under subsection**
9 **(c)(2)(A) for the procuring activity for**
10 **which the waiver is requested.**

11 **“(D) NOTICE OF WAIVER.—The Ad-**
12 **ministrator shall promptly submit a**
13 **notice of each waiver under this**
14 **paragraph to the Committee on Gov-**
15 **ernment Operations of the House of**
16 **Representatives and the Committee**
17 **on Governmental Affairs of the Sen-**
18 **ate, and promptly publish the notice**
19 **in the Federal Register.”.**

20 **(f) TECHNICAL CORRECTIONS.—**

21 **(1) Section 18(d) of the Office of Fed-**
22 **eral Procurement Policy Act (41 U.S.C.**
23 **416) is amended by striking “(e)” in the**
24 **first sentence and inserting “(a)”.**

1 **(2) Section 18(a)(1) of the Office of**
2 **Federal Procurement Policy Act (41**
3 **U.S.C. 416(a)(1)) is amended—**

4 **(A) in subparagraph (A) in the**
5 **matter following clause (ii) by strik-**
6 **ing “notice” and inserting “notice of**
7 **solicitation”; and**

8 **(B) in subparagraph (B) in the**
9 **matter preceding clause (i) by strik-**
10 **ing “a notice of solicitation described**
11 **in subsection (f)” and inserting “a no-**
12 **tice of solicitation described in sub-**
13 **section (b)”.**

14 **SEC. 504. TEST PROGRAM.**

15 **(a) IN GENERAL.—The Administrator for**
16 **Federal Procurement Policy (in this section**
17 **referred to as the “Administrator”) may con-**
18 **duct a program of tests of alternative and in-**
19 **novative procurement procedures. To the ex-**
20 **tent consistent with this section, such pro-**
21 **gram shall be conducted consistent with sec-**
22 **tion 15 of the Office of Federal Procurement**
23 **Policy Act (41 U.S.C. 413). No more than 6**
24 **such tests shall be conducted under this au-**
25 **thority.**

1 **(b) DESIGNATION OF AGENCIES.—Each test**
2 **conducted pursuant to subsection (a) shall be**
3 **limited to not more than 2 specific contract-**
4 **ing activities in an agency designated by the**
5 **Administrator. Each agency so designated**
6 **shall select the contracting activities partici-**
7 **pating in the test with the approval of the Ad-**
8 **ministrator and shall designate a procure-**
9 **ment testing official who shall be responsible**
10 **for the conduct and evaluation of tests within**
11 **that agency.**

12 **(c) TEST REQUIREMENTS.—Tests conducted**
13 **under subsection (a)—**

14 **(1) shall be developed and structured**
15 **by the Administrator or by the agency**
16 **senior procurement executives des-**
17 **ignated pursuant to section 16(4) of the**
18 **Office of Federal Procurement Policy Act,**
19 **as redesignated by section 111 of this Act,**
20 **in close coordination with the Adminis-**
21 **trator;**

22 **(2) shall be for a period of not greater**
23 **than 4 years;**

1 **(3) shall be limited to specific pro-**
2 **grams of agencies or specific acquisi-**
3 **tions;**

4 **(4) may not include any test with a**
5 **total estimated life-cycle cost to the Gov-**
6 **ernment greater than \$100,000,000;**

7 **(5) shall include—**

8 **(A) a test by the National Aero-**
9 **nautics and Space Administration of**
10 **simplified procurement procedures**
11 **for acquisitions with an estimated an-**
12 **nual total obligation of funds of**
13 **\$500,000 or less;**

14 **(B) a test by the General Services**
15 **Administration of expedited methods**
16 **for procuring automatic data process-**
17 **ing equipment commodities;**

18 **(C) a test by at least one agency**
19 **of streamlined procedures for com-**
20 **petition among interested sources**
21 **participating in the tailoring of a so-**
22 **licitation for the purchase of commer-**
23 **cial products; and**

24 **(D) a test of commercial item ac-**
25 **quisition procedures in which all**

1 **evaluation factors and subfactors on**
2 **which a contract award will be based**
3 **are disclosed in the solicitation, iden-**
4 **tifying both the absolute and relative**
5 **weight for each factor and each**
6 **subfactor; and**

7 **(6) shall not include any procurement**
8 **the cost of which is expected to exceed**
9 **\$5,000,000 (including options).**

10 **(d) LIMITATION ON TOTAL VALUE OF CON-**
11 **TRACTS UNDER PROGRAM.—**

12 **(1) LIMITATION.—The Administrator**
13 **shall ensure that the total amount obli-**
14 **gated under contracts awarded pursuant**
15 **to the program under this section does**
16 **not exceed \$600,000,000.**

17 **(2) MONITORING.—The Administrator**
18 **shall monitor the value of contracts**
19 **awarded pursuant to the program under**
20 **this section.**

21 **(3) PROHIBITION ON AWARDS IN EXCESS**
22 **OF LIMIT.—No contract may be awarded**
23 **under the program under this section if**
24 **the award of the contract would result in**

1 **obligation of more than \$600,000,000**
2 **under contracts under this section.**

3 **(e) PROCEDURES AUTHORIZED.—Tests con-**
4 **ducted under this section may include tests of**
5 **any of the following procedures:**

6 **(1) Publication of agency needs prior**
7 **to drafting of a solicitation.**

8 **(2) Screening of sources and competi-**
9 **tion among capable vendors.**

10 **(3) Issuance of draft solicitations for**
11 **comment.**

12 **(4) Streamlined solicitations, with a**
13 **minimized number of evaluation factors**
14 **and information required from vendors,**
15 **abbreviated periods for submission of of-**
16 **fers, and page limitations on offers.**

17 **(5) Limitation of source selection fac-**
18 **tors to—**

19 **(A) cost to the Government;**

20 **(B) past experience; and**

21 **(C) quality of the contents of the**
22 **offer.**

23 **(6) Evaluation of proposals by small**
24 **teams of highly qualified people, limited**
25 **to 30 days.**

1 **(7) Competition among sources of**
2 **preevaluated products.**

3 **(8) Alternative notice and publication**
4 **requirements.**

5 **(9) A process in which—**

6 **(A) the competitive process is ini-**
7 **tiated by a notice in the Commerce**
8 **Business Daily synthesizing the needs**
9 **of the executive agency conducting**
10 **the test, in functional and perform-**
11 **ance terms, with other specifications**
12 **provided for guidance only;**

13 **(B) the notice invites interested**
14 **sources to submit information or sam-**
15 **ples showing their product's suit-**
16 **ability for those needs (with price**
17 **quotations) or, if appropriate, show-**
18 **ing the sources' technical capability,**
19 **past performance, product**
20 **supportability, or other qualifications**
21 **(with appropriate consideration to**
22 **rates and other cost-related factors);**

23 **(C) contracting officials develop a**
24 **request for proposals (including ap-**
25 **propriate specifications and evalua-**

tion criteria) after reviewing the submittals made by interested sources and, if the officials determine necessary, after consultation with those sources; and

(D) the contract is awarded after a streamlined competition limited to all sources that timely provided product information in response to the notice or, if appropriate, to those sources determined most capable based on those qualification-based factors included in an invitation to submit information pursuant to subparagraph (B).

(f) TEST PLAN.—Not later than 60 days before implementing any test program under this section, the Administrator shall—

(1) provide a detailed test plan, including lists of any regulations that are to be waived, and any written determination under subsection (f)(1)(B) to the Committee on Government Operations of the House of Representatives and the

1 **Committee on Governmental Affairs of**
2 **the Senate;**

3 **(2) provide a copy of the plan to the**
4 **appropriate authorizing committees of**
5 **the House of Representatives and the**
6 **Senate; and**

7 **(3) publish the plan in the Federal**
8 **Register and provide an opportunity for**
9 **public comment.**

10 **(g) WAIVER OF PROCUREMENT REGULA-**
11 **TIONS.—**

12 **(1) IN GENERAL.—For purposes of a**
13 **test conducted under subsection (a), the**
14 **Administrator may waive—**

15 **(A) any provision of the Federal**
16 **Acquisition Regulation that is not re-**
17 **quired by statute; and**

18 **(B) any provision of the Federal**
19 **Acquisition Regulation that is re-**
20 **quired by a provision of law de-**
21 **scribed in paragraph (2), the waiver**
22 **of which the Administrator deter-**
23 **mines in writing to be necessary to**
24 **conduct any test of any of the 9 pro-**
25 **cedures described in subsection (e).**

1 **(2) PROVISIONS OF LAW DESCRIBED.—**

2 **The provisions of law referred to in para-**
3 **graph (1) are the following:**

4 **(A) Section 3709 of the Revised**
5 **Statutes (41 U.S.C. 5).**

6 **(B) Section 3710 of the Revised**
7 **Statutes (41 U.S.C. 8).**

8 **(C) Section 3735 of the Revised**
9 **Statutes (41 U.S.C. 13).**

10 **(D) Section 310 of the Federal**
11 **Property and Administrative Services**
12 **Act of 1949 (41 U.S.C. 260).**

13 **(E) Section 303 of the Federal**
14 **Property and Administrative Services**
15 **Act of 1949 (41 U.S.C. 253).**

16 **(F) Section 2304 of title 10, United**
17 **States Code.**

18 **(G) Section 303A of the Federal**
19 **Property and Administrative Services**
20 **Act of 1949 (41 U.S.C. 253a).**

21 **(H) Section 303B of the Federal**
22 **Property and Administrative Services**
23 **Act of 1949 (41 U.S.C. 253b).**

24 **(I) Section 2305 of title 10, United**
25 **States Code.**

1 **(J) Section 303C of the Federal**
2 **Property and Administrative Services**
3 **Act of 1949 (41 U.S.C. 253c).**

4 **(K) Section 2319 of title 10, United**
5 **States Code.**

6 **(L) Section 4(6) of the Office of**
7 **Federal Procurement Policy Act (41**
8 **U.S.C. 403(6)).**

9 **(M) Section 18 of the Office of**
10 **Federal Procurement Policy Act (41**
11 **U.S.C. 416).**

12 **(N) Sections 8(e), (f), and (g) of the**
13 **Small Business Act (15 U.S.C. 637(e),**
14 **(f), and (g)).**

15 **(h) REPORTS AND REVIEWS.—**

16 **(1) ADMINISTRATOR.—The Adminis-**
17 **trator shall report to the Congress on the**
18 **results of each test conducted under sub-**
19 **section (a).**

20 **(2) COMPTROLLER GENERAL.—The**
21 **Comptroller General of the United States**
22 **shall review each test conducted under**
23 **subsection (a) and report to the Congress**
24 **on each test and shall report annually to**
25 **the Congress on the conduct of and re-**

1 **sults of all tests conducted under sub-**
2 **section (a).**

3 **(i) EXPIRATION OF AUTHORITY.—The author-**
4 **ity to conduct tests under this section and to**
5 **award contracts under such tests shall expire**
6 **on October 1, 1997. Contracts entered prior to**
7 **October 1, 1997, pursuant to a test shall re-**
8 **main in effect, notwithstanding the expira-**
9 **tion of the authority to conduct the test under**
10 **this section.**

11 **SEC. 505. SINGLE AUDIT UNDER BROOKS ARCHITECT-ENGI-**
12 **NEERS ACT.**

13 **Section 904 of the Federal Property and**
14 **Administrative Services Act of 1949 (40 U.S.C.**
15 **544) is amended by adding at the end the fol-**
16 **lowing:**

17 **“(d) An agency may not perform any pre-**
18 **award audit to evaluate proposed costs under**
19 **any contract, subcontract, or modification**
20 **awarded or made in accordance with this title**
21 **in any case in which the contracting officer**
22 **determines that the objectives of the audit**
23 **reasonably can be met by accepting the re-**
24 **sults of an audit conducted by a Federal Gov-**

1 ernment audit agency within the previous
2 year.”.

3 **SEC. 506. BUY AMERICAN REQUIREMENT FOR FEDERAL**
4 **AGENCIES.**

5 **(a) APPLICABILITY OF BUY AMERICAN RE-**
6 **QUIREMENTS.—The Administrator of General**
7 **Services shall ensure that the requirements of**
8 **the Buy American Act apply to all procure-**
9 **ments, consistent with international obliga-**
10 **tions, made with funds provided pursuant to**
11 **the authorization contained in the amend-**
12 **ment made by section 601.**

13 **(b) REPORTS ON PROCUREMENTS FROM FOR-**
14 **EIGN ENTITIES.—The Administrator of General**
15 **Services shall submit to the Congress a report**
16 **on the amount of procurements from foreign**
17 **entities made in fiscal years 1994, 1995, and**
18 **1996 with funds provided pursuant to the au-**
19 **thorization contained in the amendment**
20 **made by section 601. Such report shall sepa-**
21 **rately indicate the dollar value of items pro-**
22 **cured with such funds for which the Buy**
23 **American Act was waived pursuant to the**
24 **Trade Agreement Act of 1979 or any inter-**

1 national agreement to which the United
2 States is a party.

3 (c) PROHIBITION OF CONTRACTS WITH PER-
4 SONS FALSELY LABELING PRODUCTS AS MADE IN
5 AMERICA.—If the Administrator of General
6 Services determines that a person has been
7 convicted of intentionally affixing a label
8 bearing a “Made in America” inscription to
9 any product sold in or shipped to the United
10 States that is not made in America, the Ad-
11 ministrator shall determine, not later than 90
12 days after determining that the person has
13 been so convicted, whether the person should
14 be debarred from contracting with the Gen-
15 eral Services Administration. If the Adminis-
16 trator determines that the person should not
17 be debarred, the Administrator shall submit
18 to the Congress a report on such determina-
19 tion not later than 30 days after the deter-
20 mination is made.

21 (d) DEFINITIONS.—For purposes of this sec-
22 tion—

23 (1) the term “Buy American Act”
24 means title III of the Act entitled “An Act
25 making appropriations for the Treasury

1 **and Post Office Departments for the fis-**
2 **cal year ending June 30, 1934, and for**
3 **other purposes”, approved March 3, 1933**
4 **(41 U.S.C. 10a et seq.); and**

5 **(2) the term “debar” means to ex-**
6 **clude, pursuant to established adminis-**
7 **trative procedures, from Government**
8 **contracting and subcontracting for a**
9 **specified period of time commensurate**
10 **with the seriousness of the failure or of-**
11 **fense or the inadequacy of performance.**

12 **SEC. 507. STUDY OF PARTICIPATION BY CERTAIN SMALL**
13 **BUSINESSES IN FEDERAL PROCUREMENT.**

14 **(a) STUDY.—The Administrator for Federal**
15 **Procurement Policy shall conduct a study of—**

16 **(1) the degree of participation by**
17 **small businesses owned and controlled by**
18 **socially and economically disadvantaged**
19 **individuals in procurements conducted**
20 **by executive agencies, other than agen-**
21 **cies in the Department of Defense; and**

22 **(2) the extent of compliance by those**
23 **executive agencies with the goals for par-**
24 **ticipation by such businesses required by**
25 **Office of Federal Procurement Policy pol-**

1 **icy letter 91-1, relating to Government-**
2 **wide small business and small disadvan-**
3 **tagged business goals for procurement**
4 **contracts.**

5 **(b) REPORT.—Not later than 6 months after**
6 **the date of the enactment of this Act, the Ad-**
7 **ministrator for Federal Procurement Policy**
8 **shall submit a report on the study required**
9 **under subsection (a) to the Committee on**
10 **Government Operations and the Committee**
11 **on Small Business of the House of Representa-**
12 **tives, and to the Committee on Governmental**
13 **Affairs and the Committee on Small Business**
14 **of the Senate. The report shall include rec-**
15 **ommendations to facilitate the provision of**
16 **authority to executive agencies, other than**
17 **agencies in the Department of Defense, to**
18 **conduct procurement set asides for small**
19 **businesses owned and controlled by socially**
20 **and economically disadvantaged individuals,**
21 **and on improved outreach programs to in-**
22 **crease the participation by such businesses in**
23 **procurements conducted by those executive**
24 **agencies.**

1 **TITLE VI—PROVISIONS RELAT-**
2 **ING TO GENERAL SERVICES**
3 **ADMINISTRATION**

4 **SEC. 601. AUTHORIZATION OF FUNCTIONS AND ACTIVITIES**
5 **UNDER THE FEDERAL PROPERTY AND AD-**
6 **MINISTRATIVE SERVICES ACT OF 1949.**

7 **Section 603(a) of the Federal Property and**
8 **Administrative Services Act of 1949 (40 U.S.C.**
9 **475) is amended to read as follows:**

10 **“(a) There are authorized to be appro-**
11 **priated such sums as may be necessary to**
12 **carry out the provisions of this Act for each**
13 **fiscal year through the fiscal year ending on**
14 **September 30, 1996, including payment in ad-**
15 **vance, when authorized by the Administrator,**
16 **for library memberships in societies whose**
17 **publications are available to members only,**
18 **or to members at a price lower than that**
19 **charged to the general public. Nothing in this**
20 **subsection shall affect authorizations of ap-**
21 **propriations or appropriations set forth else-**
22 **where in this Act.”.**

1 **SEC. 602. REQUIREMENTS FOR APPOINTMENTS TO SENIOR**
2 **POSITIONS IN GENERAL SERVICES ADMINIS-**
3 **TRATION.**

4 **(a) IN GENERAL.—Section 101 of the Fed-**
5 **eral Property and Administrative Services**
6 **Act of 1949 (40 U.S.C. 751) is amended by re-**
7 **designating subsection (f) as subsection (g)**
8 **and by inserting after subsection (e) the fol-**
9 **lowing new subsection:**

10 **“(f) A person appointed as the Deputy Ad-**
11 **ministrator of General Services or as the head**
12 **of a principal organizational unit of the Gen-**
13 **eral Services Administration shall, in addition**
14 **to any other minimum qualifications, have**
15 **significant previous management experience**
16 **in government or the private sector in an area**
17 **or areas directly related to the functions and**
18 **responsibilities of the position to which that**
19 **person is appointed.”.**

20 **(b) EFFECTIVE DATE.—The amendments**
21 **made by subsection (a) shall not apply to any**
22 **person in a position affected by such amend-**
23 **ments on the date of the enactment of this**
24 **Act.**

1 **SEC. 603. TERMINATION OF REQUIREMENT.**

2 **The laws of the United States are amend-**
 3 **ed to read as if section 630 of Public Law 102-**
 4 **393 had not been enacted.**

5 **SECTION 1. SHORT TITLE.**

6 *This Act may be cited as the “Federal Acquisition Im-*
 7 *provement Act of 1994”.*

8 **SEC. 2. TABLE OF CONTENTS.**

9 *The table of contents for this Act is as follows:*

Sec. 1. Short title.

Sec. 2. Table of contents.

TITLE I—CONTRACT FORMATION

Subtitle A—Competition Statutes

PART I—ARMED SERVICES ACQUISITIONS

SUBPART A—COMPETITION REQUIREMENTS

Sec. 1001. References to Federal Acquisition Regulation.

Sec. 1002. Exclusion of particular sources.

Sec. 1003. Exception to use of competitive procedures for continued occupancy of leased space.

Sec. 1004. Approval for use of noncompetitive procedures.

Sec. 1005. Contracts for professional and technical services.

SUBPART B—PLANNING, SOLICITATION, EVALUATION, AND AWARD

Sec. 1011. Source selection factors.

Sec. 1012. Solicitation provision regarding evaluation of purchase options.

Sec. 1013. Prompt notice of award.

Sec. 1014. Post-award debriefings.

Sec. 1015. Protest file.

Sec. 1016. Award of multiple contracts.

Sec. 1017. Consideration of contractor past performance.

Sec. 1018. Discouragement of nonstandard contract clauses.

SUBPART C—KINDS OF CONTRACTS

Sec. 1021. Repeal of requirement for Secretarial determination regarding use of cost type or incentive contract.

SUBPART D—MISCELLANEOUS PROVISIONS FOR THE ENCOURAGEMENT OF COMPETITION

Sec. 1031. Repeal of requirement for annual report by advocates for competition.

*PART II—CIVILIAN AGENCY ACQUISITIONS**SUBPART A—COMPETITION REQUIREMENTS*

- Sec. 1051. References to Federal Acquisition Regulation.*
- Sec. 1052. Exclusion of particular sources.*
- Sec. 1053. Exception to use of competitive procedures for continued occupancy of leased space.*
- Sec. 1054. Approval for use of noncompetitive procedures.*

SUBPART B—PLANNING, SOLICITATION, EVALUATION, AND AWARD

- Sec. 1061. Solicitation, evaluation, and award.*
- Sec. 1062. Solicitation provision regarding evaluation of purchase options.*
- Sec. 1063. Prompt notice of award.*
- Sec. 1064. Post-award debriefings.*
- Sec. 1065. Protest file.*
- Sec. 1066. Award of multiple contracts.*
- Sec. 1067. Discouragement of nonstandard contract clauses.*

SUBPART C—KINDS OF CONTRACTS

- Sec. 1071. Repeal of agency head determination regarding use of cost type or incentive contract.*
- Sec. 1072. Multiyear contracts.*

PART III—ACQUISITIONS GENERALLY

- Sec. 1091. Repeal of requirement for annual report on competition.*

*Subtitle B—Truth in Negotiations**PART I—ARMED SERVICES ACQUISITIONS*

- Sec. 1201. Stabilization of dollar threshold of applicability.*
- Sec. 1202. Exceptions to cost or pricing data requirements.*
- Sec. 1203. Right of United States to examine contractor records.*
- Sec. 1204. Consistency of time references.*
- Sec. 1205. Repeal of superseded provision.*

PART II—CIVILIAN AGENCY ACQUISITIONS

- Sec. 1251. Revision of civilian agency provisions to ensure uniform treatment of cost or pricing data.*
- Sec. 1252. Repeal of obsolete provision.*

Subtitle C—Research and Development

- Sec. 1301. Cooperative agreements for advanced research.*
- Sec. 1302. Competition requirement for awards of grants and contracts to colleges and universities.*

*Subtitle D—Procurement Protests**PART I—PROTESTS TO THE COMPTROLLER GENERAL*

- Sec. 1401. Review of protests and effect on contracts pending decision.*
- Sec. 1402. Decisions on protests.*
- Sec. 1403. Regulations.*

PART II—PROTESTS IN PROCUREMENTS OF AUTOMATIC DATA PROCESSING

- Sec. 1431. Periods for certain actions.*
- Sec. 1432. Dismissals of frivolous protests and recovery of costs.*
- Sec. 1433. Award of costs.*
- Sec. 1434. Dismissal agreements.*
- Sec. 1435. Matters to be covered in regulations.*
- Sec. 1436. Oversight of acquisition of automatic data processing equipment by Federal agencies.*

Subtitle E—Policy, Definitions, and Other Matters

PART I—ARMED SERVICES ACQUISITIONS

- Sec. 1501. Congressional defense procurement policy.*
- Sec. 1502. Definitions.*
- Sec. 1503. Delegation of procurement functions.*
- Sec. 1504. Determinations and decisions.*
- Sec. 1505. Restrictions on undefinitized contractual actions.*
- Sec. 1506. Repeal of requirement relating to production special tooling and production special test equipment.*
- Sec. 1507. Regulations for bids.*

PART II—CIVILIAN AGENCY ACQUISITIONS

- Sec. 1551. Definitions.*
- Sec. 1552. Delegation of procurement functions.*
- Sec. 1553. Determinations and decisions.*
- Sec. 1554. Restrictions on undefinitized contractual actions.*

TITLE II—CONTRACT ADMINISTRATION

SUBTITLE A—CONTRACT PAYMENT

PART I—ARMED SERVICES ACQUISITIONS

- Sec. 2001. Contract financing.*
- Sec. 2002. Repeal of vouchering procedures section.*

PART II—CIVILIAN AGENCY ACQUISITIONS

- Sec. 2051. Contract financing.*

PART III—ACQUISITIONS GENERALLY

- Sec. 2061. Interest penalty on contract close-out lag-time.*

SUBTITLE B—COST PRINCIPLES

PART I—ARMED SERVICES ACQUISITIONS

- Sec. 2101. Allowable contract costs.*
- Sec. 2102. Repeal of contract profit controls during emergency periods.*

PART II—CIVILIAN AGENCY ACQUISITIONS

- Sec. 2151. Allowable contract costs.*

*PART III—ACQUISITIONS GENERALLY**Sec. 2161. Travel expenses of Government contractors.**SUBTITLE C—AUDIT AND ACCESS TO RECORDS**PART I—ARMED SERVICES ACQUISITIONS**Sec. 2201. Consolidation and revision of authority to examine records of contractors.**PART II—CIVILIAN AGENCY ACQUISITIONS**Sec. 2251. Authority to examine records of contractors.**SUBTITLE D—COST ACCOUNTING STANDARDS**Sec. 2301. Repeal of obsolete deadline regarding procedural regulations for the Cost Accounting Standards Board.**SUBTITLE E—ADMINISTRATION OF CONTRACT PROVISIONS RELATING TO PRICE, DELIVERY, AND PRODUCT QUALITY**Sec. 2401. Clarification of provision relating to quality control of certain spare parts.**Sec. 2402. Contractor guarantees regarding weapon systems.**SUBTITLE F—CLAIMS AND DISPUTES**Sec. 2501. Certification of contract claims.**TITLE III—MAJOR SYSTEMS AND SERVICE SPECIFIC STATUTES**Subtitle A—Major Systems Statutes**Sec. 3001. Weapon development and procurement schedules.**Sec. 3002. Selected Acquisition Report requirement.**Sec. 3003. Unit cost report requirement.**Sec. 3004. Requirement for independent cost estimates and manpower estimates before development or production.**Sec. 3005. Baseline description.**Sec. 3006. Repeal of requirement for competitive prototyping in major programs.**Sec. 3007. Repeal of requirement for competitive alternative sources in major programs.**Subtitle B—Testing Statutes**Sec. 3011. Authorization of less than full-up testing.**Sec. 3012. Limitation on quantities to be procured for low-rate initial production.**Sec. 3013. Operational test and evaluation of defense acquisition programs.**Subtitle C—Civil Reserve Air Fleet**Sec. 3021. Definition of contractor.**Sec. 3022. Consolidation of provisions relating to contractual commitment of aircraft.**Sec. 3023. Use of military installations by contractors.*

Subtitle D—Miscellaneous

- Sec. 3051. Extension to Department of Defense generally of provision relating to manufacture at factories and arsenals.*
- Sec. 3052. Codification of accounting requirement for contracted advisory and assistance services.*
- Sec. 3053. Regulations on procurement, production, warehousing, and supply distribution functions.*
- Sec. 3054. Repeal of requirements regarding product evaluation activities.*
- Sec. 3055. Codification and revision of limitation on lease of vessels, aircraft, and vehicles.*
- Sec. 3056. Repeal of application of Public Contracts Act to certain naval vessel contracts.*

**TITLE IV—SIMPLIFIED ACQUISITION THRESHOLD AND
SOCIOECONOMIC, SMALL BUSINESS, AND MISCELLANEOUS LAWS**

*Subtitle A—Simplified Acquisition Threshold**PART I—ESTABLISHMENT OF THRESHOLD*

- Sec. 4001. Establishment of simplified acquisition threshold.*
- Sec. 4002. Federal Acquisition Computer Network.*
- Sec. 4003. Implementation in armed services.*
- Sec. 4004. Implementation in civilian agencies.*

PART II—SIMPLIFICATION OF PROCEDURES

- Sec. 4011. Small business provisions.*
- Sec. 4012. Procedures for purchases below micro-purchase threshold.*
- Sec. 4013. Procurement notice.*
- Sec. 4014. GAO test and report on performance of simplified acquisition threshold.*

**PART III—INAPPLICABILITY OF LAWS TO ACQUISITIONS NOT IN EXCESS OF
SIMPLIFIED ACQUISITION THRESHOLD**

SUBPART A—GENERALLY

- Sec. 4021. Inapplicability of future enacted procurement laws to contracts not exceeding the simplified acquisition threshold.*

SUBPART B—ARMED SERVICES ACQUISITIONS

- Sec. 4031. Inapplicability of certain provisions of law.*
- Sec. 4032. Conforming amendments relating to inapplicability of certain provisions of law.*

SUBPART C—CIVILIAN AGENCY ACQUISITIONS

- Sec. 4041. Inapplicability of certain provisions of law.*
- Sec. 4042. Conforming amendments relating to inapplicability of certain provisions of law.*

SUBPART D—ACQUISITIONS GENERALLY

- Sec. 4051. Conformance of certain procurement integrity requirements.*
- Sec. 4052. Inapplicability of the Drug-Free Workplace Act of 1988.*

PART IV—CONFORMING AMENDMENTS

- Sec. 4071. Armed services acquisitions.*
- Sec. 4072. Civilian agency acquisitions.*
- Sec. 4073. Office of Federal Procurement Policy Act.*
- Sec. 4074. Small Business Act.*

PART V—REVISION OF REGULATIONS

- Sec. 4081. Revision required.*

Subtitle B—Socioeconomic and Small Business Laws

- Sec. 4101. Payment protections for subcontractors and suppliers.*
- Sec. 4102. Small business procurement advisory council.*

Subtitle C—Miscellaneous Acquisition Laws

- Sec. 4151. Restriction on use of noncompetitive procedures for procurement from a specified source.*
- Sec. 4152. Repeal of obsolete provision.*

TITLE V—STANDARDS OF CONDUCT

- Sec. 5001. Contracting functions performed by Federal personnel.*
- Sec. 5002. Repeal of executed requirement for study and report.*
- Sec. 5003. Waiting period for significant changes proposed for acquisition regulations.*
- Sec. 5004. Repeal of superseded and obsolete laws.*

TITLE VI—DEFENSE TRADE AND COOPERATION

- Sec. 6001. Exception to Buy American Act for micro-purchases.*
- Sec. 6002. Policy on purchase of foreign goods.*
- Sec. 6003. Consolidation of limitations on procurement of goods other than American goods.*
- Sec. 6004. International cooperative agreements.*
- Sec. 6005. Miscellaneous repeals.*

TITLE VII—COMMERCIAL ITEMS

Subtitle A—Armed Services Acquisitions

- Sec. 7001. Establishment of new chapter in title 10.*
- Sec. 7002. Definitions.*
- Sec. 7003. Preference for acquisition of commercial items.*
- Sec. 7004. Pricing documentation for commercial items.*
- Sec. 7005. Regulations on acquisition of commercial items.*
- Sec. 7006. Principle of construction with future laws.*
- Sec. 7007. Inapplicability of certain provisions of law.*
- Sec. 7008. Conforming amendments relating to inapplicability of certain provisions of law.*

Subtitle B—Civilian Agency Acquisitions

- Sec. 7011. Definitions.*
- Sec. 7012. Preference for acquisition of commercial items.*
- Sec. 7013. Pricing documentation for commercial items.*
- Sec. 7014. Regulations on acquisition of commercial items.*

- Sec. 7015. Principle of construction with future laws.*
Sec. 7016. Inapplicability of certain provisions of law.
Sec. 7017. Conforming amendments relating to inapplicability of certain provisions of law.

Subtitle C—Acquisitions Generally

- Sec. 7021. Conforming amendment relating to inapplicability of certain provisions of law.*
Sec. 7022. Flexible deadlines for submission of offers of commercial items.
Sec. 7023. Additional responsibilities for advocates for competition.
Sec. 7024. Provisions not affected.
Sec. 7025. Comptroller General review of Federal government use of market research.

TITLE VIII—MISCELLANEOUS PROVISIONS

- Sec. 8001. Contract goal for small disadvantaged businesses and certain institutions of higher education.*
Sec. 8002. Education and training.
Sec. 8003. Department of Defense acquisition of intellectual property rights.
Sec. 8004. Cooperative purchasing.
Sec. 8005. Sense of Congress on negotiated rulemaking.
Sec. 8006. Extension of defense acquisition workforce policies Government-wide.
Sec. 8007. Vendor and employee excellence awards.
Sec. 8008. Department of Defense review of antitrust cases with national security implications.
Sec. 8009. Technical and clerical amendments.

TITLE IX—EFFECTIVE DATES AND REGULATIONS

- Sec. 9001. Effective dates.*
Sec. 9002. Regulations.

1 *TITLE I—CONTRACT FORMATION*

2 *Subtitle A—Competition Statutes*

3 *PART I—ARMED SERVICES ACQUISITIONS*

4 *Subpart A—Competition Requirements*

5 *SEC. 1001. REFERENCES TO FEDERAL ACQUISITION REGU-*
6 *LATION.*

7 *Section 2304 of title 10, United States Code, is amend-*
8 *ed—*

9 *(1) in subsection (a)(1)(A), by striking out*
10 *“modifications” and all that follows through “note)”*

1 and inserting in lieu thereof “Federal Acquisition
2 Regulation”; and

3 (2) in subsection (g)(1), by striking out “regula-
4 tions modified” and all that follows through “note)”
5 and inserting in lieu thereof “Federal Acquisition
6 Regulation”.

7 **SEC. 1002. EXCLUSION OF PARTICULAR SOURCES.**

8 (a) *PROHIBITION ON USE OF CLASSES OF PURCHASES*
9 *OR CONTRACTS.*—Section 2304(b) of title 10, United States
10 Code, is amended—

11 (1) by redesignating paragraphs (2) and (3) as
12 paragraphs (3) and (4), respectively;

13 (2) by inserting after paragraph (1) the follow-
14 ing new paragraph (2):

15 “(2) The determination required of the head of an
16 agency in paragraph (1) may not be made for a class of
17 purchases or contracts.”; and

18 (3) in paragraph (4), as redesignated by para-
19 graph (1), by striking out “paragraphs (1) and (2)”
20 and inserting in lieu thereof “paragraphs (1) and
21 (3)”.

22 (b) *ADDITIONAL JUSTIFICATION TO EXCLUDE PAR-*
23 *TICULAR SOURCE.*—Section 2304(b)(1) of such title is
24 amended—

1 (1) by striking out “or” at the end of subpara-
2 graph (B);

3 (2) by striking out the period at the end of sub-
4 paragraph (C) and inserting in lieu thereof “; or”;
5 and

6 (3) by adding at the end the following new sub-
7 paragraph:

8 “(D) would ensure a continuous and reliable
9 source; satisfy a critical need for health, safety, or
10 other emergency supplies; or satisfy projected needs
11 resulting from a history of high demand for the sup-
12 ply or service.”.

13 **SEC. 1003. EXCEPTION TO USE OF COMPETITIVE PROCE-**
14 **DURES FOR CONTINUED OCCUPANCY OF**
15 **LEASED SPACE.**

16 Section 2304(d)(1) of title 10, United States Code, is
17 amended—

18 (1) by striking out “and” at the end of subpara-
19 graph (A);

20 (2) by striking out the period at the end of sub-
21 paragraph (B) and inserting in lieu thereof “; and”;
22 and

23 (3) by adding at the end the following new sub-
24 paragraph:

1 “(C) in the case of a follow-on contract to ac-
 2 quire leasehold interests in real property providing
 3 for the continued occupancy by Federal agencies of
 4 space in buildings, such space may be deemed to be
 5 available only from the incumbent lessor and may be
 6 acquired through procedures other than competitive
 7 procedures if a determination is made that (i) the oc-
 8 cupant agencies have a continuing need for the space,
 9 (ii) the space meets the needs of the agencies, and (iii)
 10 the incumbent lessor is willing to continue to provide
 11 the space at a fair market price as established by the
 12 Government based on a market survey or an ap-
 13 praisal conducted in accordance with generally ac-
 14 cepted real property appraisal procedures.”.

15 **SEC. 1004. APPROVAL FOR USE OF NONCOMPETITIVE PRO-**
 16 **CEDURES.**

17 Section 2304(f)(1)(B)(i) of title 10, United States
 18 Code, is amended by inserting before the semicolon at the
 19 end the following: “or by an official referred to in clause
 20 (ii), (iii), or (iv)”.

21 **SEC. 1005. CONTRACTS FOR PROFESSIONAL AND TECH-**
 22 **NICAL SERVICES.**

23 (a) AMENDMENT.—Section 2304(j)(4) of title 10,
 24 United States Code, is amended—

25 (1) by inserting “(A)” after “(4)”; and

1 (2) by adding at the end the following new sub-
2 paragraph:

3 “(B) The Secretary of Defense may waive the limita-
4 tion in subparagraph (A) to the extent the Secretary consid-
5 ers the use of master agreements necessary in order to fur-
6 ther the policy set forth in section 2331(a) of this title. Dur-
7 ing any fiscal year, such a waiver may not increase the
8 total value of task orders under master agreements of a con-
9 tracting activity by more than 20 percent of the value of
10 all contracts for advisory and assistance services awarded
11 by that contracting activity during fiscal year 1989.”.

(b) *CONFORMING REPEAL.*—Subsection (c) of section 2331 of title 10, United States Code, is repealed.

14 ***Subpart B—Planning, Solicitation, Evaluation, and***
15 ***Award***

16 ***SEC. 1011. SOURCE SELECTION FACTORS.***

17 *Section 2305(a) of title 10, United States Code, is*
18 *amended—*

19 (1) in paragraph (2)—

20 (A) in subparagraph (A)(i), by striking out
21 “nonprice-related factors)” and inserting in lieu
22 thereof “nonprice-related factors and significant
23 subfactors)”; and

1 (B) in subparagraph (B)(ii), by striking
2 out subclause (I) and inserting in lieu thereof the
3 following:

4 “(I) either a statement that the proposals
5 are intended to be evaluated with, and award
6 made after, discussions with the offerors, or a
7 statement that the proposals are intended to be
8 evaluated, and award made, without discussions
9 with the offerors (other than discussions con-
10 ducted for the purpose of minor clarification)
11 unless discussions are determined to be nec-
12 essary; and”; and

13 (2) by striking out paragraph (3) and inserting
14 in lieu thereof the following:

15 “(3)(A) In prescribing the evaluation factors to be in-
16 cluded in each solicitation for competitive proposals, the
17 head of an agency shall clearly establish the relative impor-
18 tance assigned to the evaluation factors and significant
19 subfactors, including cost or price and the quality of the
20 product or services to be provided (including technical ca-
21 pability, management capability, and prior experience of
22 the offeror).

23 “(B) Nothing in this paragraph prohibits an agency
24 from—

1 “(i) providing additional information in a solic-
 2 itation, including numeric weights for all evaluation
 3 factors (and significant subfactors); or

4 “(ii) stating in a solicitation that award will be
 5 made to the offeror that meets the solicitation’s man-
 6 datory requirements at the lowest price or cost.”.

7 **SEC. 1012. SOLICITATION PROVISION REGARDING EVALUA-**
 8 **TION OF PURCHASE OPTIONS.**

9 Section 2305(a) of title 10, United States Code, as
 10 amended by section 1011, is further amended by adding at
 11 the end the following new paragraph:

12 “(4) The head of an agency, in issuing a solicitation
 13 for a contract to be awarded using sealed bid procedures,
 14 may not include in such solicitation a clause providing for
 15 the evaluation of prices under the contract for options to
 16 purchase additional supplies or services under the contract
 17 unless the head of the agency has determined that there is
 18 a reasonable likelihood that the options will be exercised.”.

19 **SEC. 1013. PROMPT NOTICE OF AWARD.**

20 (a) *SEALED BID PROCEDURES.*—Section 2305(b) of
 21 title 10, United States Code, is amended by adding at the
 22 end of paragraph (3) the following: “Within 3 working days
 23 after the date of contract award, the head of the agency shall
 24 notify, in writing or by electronic means, all offerors not
 25 awarded the contract that the contract has been awarded.”.

1 (b) *COMPETITIVE PROPOSALS PROCEDURES.*—Such
 2 section is further amended in the second sentence of para-
 3 graph (4)(B) by striking out “shall promptly notify” and
 4 inserting in lieu thereof “, within 3 working days after the
 5 date of contract award, shall notify, in writing or by elec-
 6 tronic means,”.

7 **SEC. 1014. POST-AWARD DEBRIEFINGS.**

8 Section 2305(b) of title 10, United States Code, is
 9 amended—

10 (1) by redesignating paragraph (5) as para-
 11 graph (6); and

12 (2) by inserting after paragraph (4) the follow-
 13 ing new paragraph (5):

14 “(5)(A) When a contract is awarded by an agency on
 15 the basis of competitive proposals, an unsuccessful offeror,
 16 upon written request received by the agency within 3 work-
 17 ing days after the date of receipt of notification of the con-
 18 tract award, shall be debriefed and furnished the basis for
 19 the selection decision and contract award. An employee of
 20 the agency shall debrief the offeror within, to the maximum
 21 extent practicable, 4 working days after receipt of the re-
 22 quest by the agency.

23 “(B) Such debriefing shall include, at a minimum—

24 “(i) the agency’s evaluation of the significant
 25 weak or deficient factors in the offeror’s offer;

1 “(ii) the overall evaluated cost of the offer of the
2 contractor awarded the contract and the overall evalu-
3 ated cost of the offer of the debriefed offeror;

4 “(iii) the overall ranking of all offers and the
5 total technical and cost scores of all offers;

6 “(iv) a summary of the rationale for the award;

7 “(v) in the case of an offer by the debriefed
8 offeror that includes a commercial end item, the make
9 and model (or equivalent description) of the item in-
10 cluded in the offer of the contractor awarded the con-
11 tract; and

12 “(vi) reasonable responses to questions posed by
13 the debriefed offeror as to whether source selection
14 procedures set forth in the solicitation, applicable reg-
15 ulations, and other applicable authorities were fol-
16 lowed by the agency.

17 “(C) The debriefing shall not include point-by-point
18 comparisons of the debriefed offeror’s offer with other offers
19 and shall not disclose any information that is exempt from
20 disclosure under section 552 of title 5.

21 “(D) Each solicitation for competitive proposals shall
22 include a statement that information described in subpara-
23 graph (B) may be disclosed in post-award debriefings.

24 “(E) If, within one year after the date of the contract
25 award and as a result of a successful procurement protest

1 *or otherwise, the agency seeks to fulfill the same requirement*
2 *under the contract on the basis of the best and final offers*
3 *considered in the awarding of that contract, the agency*
4 *shall make available to offerors—*

5 “(i) *all information provided in debriefings*
6 *under this paragraph regarding the offer of the con-*
7 *tractor awarded the contract; and*

8 “(ii) *all comparable information with respect to*
9 *the original offerors.*

10 “(F) *The contracting officer shall include a summary*
11 *of the debriefing in the contract file.”.*

12 ***SEC. 1015. PROTEST FILE.***

13 *Section 2305 of title 10, United States Code, is amend-*
14 *ed by adding at the end the following new subsection:*

15 “(e)(1) *If, in the case of a solicitation for a contract*
16 *issued by, or an award or proposed award of a contract*
17 *by, the head of an agency, a protest is filed pursuant to*
18 *the procedures in subchapter V of chapter 35 of title 31 and*
19 *an actual or prospective offeror so requests, a file of the*
20 *protest shall be established by the contracting activity and*
21 *reasonable access shall be provided to actual or prospective*
22 *offerors.*

23 “(2) *A file established pursuant to paragraph (1) shall*
24 *contain such information as would ordinarily be releasable*

1 under section 552 of title 5 (commonly referred to as the
2 ‘Freedom of Information Act’).

3 “(3) Regulations implementing this subsection shall be
4 consistent with the regulations regarding the preparation
5 and submission of an agency’s protest file (the so-called
6 ‘rule 4 file’) for protests to the General Services Board of
7 Contract Appeals under the Contract Disputes Act of 1978
8 (41 U.S.C. 601 et seq.).”.

9 **SEC. 1016. AWARD OF MULTIPLE CONTRACTS.**

10 Section 2305 of title 10, United States Code, is amend-
11 ed by adding after subsection (e), as added by section 1015,
12 the following new subsection:

13 “(f) AWARD OF MULTIPLE CONTRACTS.—In procuring
14 any supply or service using competitive procedures, the
15 head of an agency may award more than one contract for
16 the same supply or service in any case in which the head
17 of the agency determines that it is in the best interests of
18 the Federal Government to award those contracts for the
19 purpose of maintaining a continuous source for the supply
20 or service.”.

21 **SEC. 1017. CONSIDERATION OF CONTRACTOR PAST PER-**
22 **FORMANCE.**

23 Paragraph (3) of section 2305(a) of title 10, United
24 States Code, as amended by section 1011(2), is further
25 amended by striking out “capability, and prior experience”

1 *in subparagraph (A) and inserting in lieu thereof “capabil-*
 2 *ity, prior experience, and past performance”.*

3 **SEC. 1018. DISCOURAGEMENT OF NONSTANDARD CON-**
 4 **TRACT CLAUSES.**

5 *Section 2305 of title 10, United States Code, is amend-*
 6 *ed by adding after subsection (f), as added by section 1016,*
 7 *the following new subsection:*

8 *“(g) NONSTANDARD CONTRACT CLAUSES.—The Sec-*
 9 *retary of Defense shall prescribe regulations to discourage,*
 10 *to the maximum extent practicable, the use of a non-*
 11 *standard contract clause on a repetitive basis. The regula-*
 12 *tions shall include provisions that—*

13 *“(1) clearly define nonstandard clauses; and*

14 *“(2) require prior approval for the use of a non-*
 15 *standard clause on a repetitive basis by an official at*
 16 *a level of responsibility above the contracting officer.”.*

17 **Subpart C—Kinds of Contracts**

18 **SEC. 1021. REPEAL OF REQUIREMENT FOR SECRETARIAL**
 19 **DETERMINATION REGARDING USE OF COST**
 20 **TYPE OR INCENTIVE CONTRACT.**

21 *Subsection (c) of section 2306 of title 10, United States*
 22 *Code, is repealed.*

**Subpart D—Miscellaneous Provisions for the
Encouragement of Competition**

**SEC. 1031. REPEAL OF REQUIREMENT FOR ANNUAL REPORT
BY ADVOCATES FOR COMPETITION.**

*Subsection (c) of section 2318 of title 10, United States
Code, is repealed.*

PART II—CIVILIAN AGENCY ACQUISITIONS

Subpart A—Competition Requirements

**SEC. 1051. REFERENCES TO FEDERAL ACQUISITION REGU-
LATION.**

*Section 303 of the Federal Property and Administra-
tive Services Act of 1949 (41 U.S.C. 253) is amended—*

*(1) in subsection (a)(1)(A), by striking out
“modifications” and all that follows through “of
1984” and inserting in lieu thereof “Federal Acquisi-
tion Regulation”; and*

*(2) in subsection (g)(1), by striking out “regula-
tions modified” and all that follows through “of
1984,” and inserting in lieu thereof “Federal Acquisi-
tion Regulation”.*

SEC. 1052. EXCLUSION OF PARTICULAR SOURCES.

*(a) PROHIBITION ON USE OF CLASSES OF PURCHASES
OR CONTRACTS.—Section 303(b) of the Federal Property
and Administrative Services Act of 1949 (41 U.S.C. 253(b))
is amended—*

1 (1) by redesignating paragraphs (2) and (3) as
2 paragraphs (3) and (4), respectively;

3 (2) by inserting after paragraph (1) the follow-
4 ing new paragraph (2):

5 “(2) The determination required of the agency head
6 in paragraph (1) may not be made for a class of purchases
7 or contracts.”; and

8 (3) in paragraph (4), as redesignated by para-
9 graph (1), by striking out “paragraphs (1) and (2)”
10 and inserting in lieu thereof “paragraphs (1) and
11 (3)”.

12 (b) *ADDITIONAL JUSTIFICATION TO EXCLUDE PAR-*
13 *TICULAR SOURCE.*—Section 303(b)(1) of the Federal Prop-
14 erty and Administrative Services Act of 1949 (41 U.S.C.
15 253(b)(1)) is amended—

16 (1) by striking out “or” at the end of subpara-
17 graph (B);

18 (2) by striking out the period at the end of sub-
19 paragraph (C) and inserting in lieu thereof “; or”;
20 and

21 (3) by adding at the end the following new sub-
22 paragraph:

23 “(D) would ensure a continuous and reliable
24 source; satisfy a critical need for health, safety, or
25 other emergency supplies; or satisfy projected needs

1 *resulting from a history of high demand for the sup-*
 2 *ply or service.”.*

3 **SEC. 1053. EXCEPTION TO USE OF COMPETITIVE PROCE-**
 4 **DURES FOR CONTINUED OCCUPANCY OF**
 5 **LEASED SPACE.**

6 *Section 303(d)(1) of the Federal Property and Admin-*
 7 *istrative Services Act of 1949 (41 U.S.C. 253(d)(1)) is*
 8 *amended—*

9 *(1) by striking out “and” at the end of subpara-*
 10 *graph (A);*

11 *(2) by striking out the period at the end of sub-*
 12 *paragraph (B) and inserting in lieu thereof “; and”;*
 13 *and*

14 *(3) by adding at the end the following new sub-*
 15 *paragraph:*

16 *“(C) in the case of a follow-on contract to ac-*
 17 *quire leasehold interests in real property providing*
 18 *for the continued occupancy by Federal agencies of*
 19 *space in buildings, such space may be deemed to be*
 20 *available only from the incumbent lessor and may be*
 21 *acquired through procedures other than competitive*
 22 *procedures if a determination is made that (i) the oc-*
 23 *cupant agencies have a continuing need for the space,*
 24 *(ii) the space meets the needs of the agencies, and (iii)*
 25 *the incumbent lessor is willing to continue to provide*

7 *Section 303(f)(1)(B)(i) of the Federal Property and*
8 *Administrative Services Act of 1949 (41 U.S.C.*
9 *253(f)(1)(B)(i)) is amended by inserting before the semi-*
10 *colon at the end the following: “or by an official referred*
11 *to in clause (ii), (iii), or (iv)”.*

14 SEC. 1061. SOLICITATION, EVALUATION, AND AWARD.

18 (1) in subsection (b)(1)(A)—

(B) by striking out “(including price)” and inserting “(including cost or price, cost-related or price-related factors and subfactors, and noncost-related or nonprice-related factors and significant subfactors)”;

1 (2) in subsection (b)(1)(B), by inserting “and
2 subfactors” after “factors”;

3 (3) in subsection (b)(2)(B), by striking out clause
4 (i) and inserting in lieu thereof the following:

5 “(i) either a statement that the proposals
6 are intended to be evaluated with, and award
7 made after, discussions with the offerors, or a
8 statement that the proposals are intended to be
9 evaluated, and award made, without discussions
10 with the offerors (other than discussions con-
11 ducted for the purpose of minor clarification)
12 unless discussions are determined to be nec-
13 essary; and”; and

14 (4) by adding at the end the following new sub-
15 section:

16 “(c)(1) In prescribing the evaluation factors to be in-
17 cluded in each solicitation for competitive proposals, an
18 agency head shall clearly establish the relative importance
19 assigned to the evaluation factors and significant
20 subfactors, including cost or price and the quality of the
21 product or services to be provided (including technical ca-
22 pability, management capability, prior experience, and
23 past performance of the offeror).

24 “(2) Nothing in this subsection prohibits an agency
25 from—

1 “(A) *providing additional information in a so-*
 2 *licitation, including numeric weights for all evalua-*
 3 *tion factors (and significant subfactors); or*

4 “(B) *stating in a solicitation that award will be*
 5 *made to the offeror that meets the solicitation’s man-*
 6 *datory requirements at the lowest price or cost.”.*

7 (b) *EVALUATION AND AWARD.—Section 303B of the*
 8 *Federal Property and Administrative Services Act of 1949*
 9 *(41 U.S.C. 253b) is amended—*

10 (1) *in subsection (a), by inserting “, and award*
 11 *a contract,” after “competitive proposals”;*

12 (2) *in subsection (c), by inserting “in accordance*
 13 *with subsection (a)” in the second sentence after*
 14 *“shall evaluate the bids”; and*

15 (3) *in subsection (d)—*

16 (A) *by striking out paragraph (1) and in-*
 17 *serting in lieu thereof the following:*

18 “(1) *An agency head shall evaluate competitive propos-*
 19 *als in accordance with subsection (a) and may award a*
 20 *contract—*

21 “(A) *after discussions with the offerors, provided*
 22 *that written or oral discussions have been conducted*
 23 *with all responsible offerors who submit proposals*
 24 *within the competitive range; or*

1 “(B) based on the proposals received and without
 2 discussions with the offerors (other than discussions
 3 conducted for the purpose of minor clarification), pro-
 4 vided that, as required by section 303A(b)(2)(B)(i),
 5 the solicitation included a statement that proposals
 6 are intended to be evaluated, and award made, with-
 7 out discussions, unless discussions are determined to
 8 be necessary.”; and

9 (B) by striking out paragraphs (2) and (3)
 10 and by redesignating paragraph (4) as para-
 11 graph (2).

12 (c) *APPLICABILITY.*—

13 (1) *IN GENERAL.*—Except as provided in para-
 14 graph (2), the amendments made by this section shall
 15 apply to—

16 (A) solicitations for sealed bids or competi-
 17 tive proposals issued after the end of the 180-day
 18 period beginning on the date of the enactment of
 19 this Act; and

20 (B) contracts awarded pursuant to those so-
 21 licitations.

22 (2) *AUTHORITY TO APPLY AMENDMENTS*
 23 *EARLY.*—The head of an executive agency may apply
 24 the amendments made by this section to solicitations
 25 issued before the end of the period referred to in para-

1 graph (1). The head of the executive agency shall pub-
2 lish in the Federal Register notice of any such earlier
3 date of application at least 10 days before that date.

4 **SEC. 1062. SOLICITATION PROVISION REGARDING EVALUA-**
5 **TION OF PURCHASE OPTIONS.**

6 Section 303A of the Federal Property and Administra-
7 tive Services Act of 1949 (41 U.S.C. 253a), as amended by
8 section 1061(a)(4), is further amended by adding at the end
9 the following new subsection:

10 “(d) An agency head, in issuing a solicitation for a
11 contract to be awarded using sealed bid procedures, may
12 not include in such solicitation a clause providing for the
13 evaluation of prices under the contract for options to pur-
14 chase additional supplies or services under the contract un-
15 less the agency head has determined that there is a reason-
16 able likelihood that the options will be exercised.”.

17 **SEC. 1063. PROMPT NOTICE OF AWARD.**

18 (a) *SEALED BID PROCEDURES*.—Subsection (c) of sec-
19 tion 303B of the Federal Property and Administrative
20 Services Act of 1949 (41 U.S.C. 253b) is amended by add-
21 ing at the end the following: “Within 3 working days after
22 the date of contract award, the agency head shall notify,
23 in writing or by electronic means, offerors not awarded the
24 contract that the contract has been awarded.”.

1 (b) *COMPETITIVE PROPOSALS PROCEDURES*.—Para-
 2 graph (2) of section 303B(d) of the Federal Property and
 3 Administrative Services Act of 1949 (41 U.S.C. 253b(d)),
 4 as redesignated by section 1061(b)(3)(B), is amended in the
 5 second sentence by striking out “shall promptly notify” and
 6 inserting in lieu thereof “, within 3 working days after the
 7 date of contract award, shall notify, in writing or by elec-
 8 tronic means,”.

9 **SEC. 1064. POST-AWARD DEBRIEFINGS.**

10 Section 303B of the Federal Property and Administra-
 11 tive Services Act of 1949 (41 U.S.C. 253b) is amended—

12 (1) by redesignating subsections (e) and (f) as
 13 subsections (f) and (g), respectively; and

14 (2) by inserting after subsection (d) the following
 15 new subsection (e):

16 “(e)(1) When a contract is awarded by an executive
 17 agency on the basis of competitive proposals, an unsucces-
 18 ful offeror, upon written request received by the executive
 19 agency within 3 working days after the date of receipt of
 20 notification of the contract award, shall be debriefed and
 21 furnished the basis for the selection decision and contract
 22 award. An employee of the executive agency shall debrief
 23 the offeror within, to the maximum extent practicable, 4
 24 working days after receipt of the request by the executive
 25 agency.

1 “(2) Such debriefing shall include, at a minimum—

2 “(A) the executive agency’s evaluation of the sig-
3 nificant weak or deficient factors in the offeror’s offer;

4 “(B) the overall evaluated cost of the offer of the
5 contractor awarded the contract and the overall evalu-
6 ated cost of the offer of the debriefed offeror;

7 “(C) the overall ranking of all offers and the
8 total technical and cost scores of all offers;

9 “(D) a summary of the rationale for the award;

10 “(E) in the case of an offer by the debriefed
11 offeror that includes a commercial end item, the make
12 and model (or equivalent description) of the item in-
13 cluded in the offer of the contractor awarded the con-
14 tract; and

15 “(F) reasonable responses to questions posed by
16 the debriefed offeror as to whether source selection
17 procedures set forth in the solicitation, applicable reg-
18 ulations, and other applicable authorities were fol-
19 lowed by the executive agency.

20 “(3) The debriefing shall not include point-by-point
21 comparisons of the debriefed offeror’s offer with other offers
22 and shall not disclose any information that is exempt from
23 disclosure under section 552 of title 5, United States Code.

1 “(4) *Each solicitation for competitive proposals shall*
 2 *include a statement that information described in para-*
 3 *graph (2) may be disclosed in post-award debriefings.*

4 “(5) *If, within one year after the date of the contract*
 5 *award and as a result of a successful procurement protest*
 6 *or otherwise, the executive agency seeks to fulfill same the*
 7 *requirement under the contract on the basis of a new solici-*
 8 *tation of offers or on the basis of the best and final offers*
 9 *considered in the awarding of that contract, the agency*
 10 *head shall make available to offerors—*

11 “(A) *all information provided in debriefings*
 12 *under this subsection regarding the offer of the con-*
 13 *tractor awarded the contract; and*

14 “(B) *all comparable information with respect to*
 15 *the original offerors.*

16 “(6) *The contracting officer shall include a summary*
 17 *of the debriefing in the contract file.”.*

18 **SEC. 1065. PROTEST FILE.**

19 *Section 303B of the Federal Property and Administra-*
 20 *tive Services Act of 1949 (41 U.S.C. 253b) is amended by*
 21 *adding at the end the following new subsection:*

22 “(h)(1) *If, in the case of a solicitation for a contract*
 23 *issued by, or an award or proposed award of a contract*
 24 *by, an agency head, a protest is filed pursuant to the proce-*
 25 *dures in subchapter V of chapter 35 of title 31, United*

1 *States Code, and an actual or prospective offeror so re-*
 2 *quests, a file of the protest shall be established by the con-*
 3 *tracting activity and reasonable access shall be provided to*
 4 *actual or prospective offerors.*

5 “(2) A file established pursuant to paragraph (1) shall
 6 contain such information as would ordinarily be releasable
 7 under section 552 of title 5 (commonly referred to as the
 8 ‘Freedom of Information Act’).

9 “(3) Regulations implementing this subsection shall be
 10 consistent with the regulations regarding the preparation
 11 and submission of an agency’s protest file (the so-called
 12 ‘rule 4 file’) for protests to the General Services Board of
 13 Contract Appeals under the Contract Disputes Act of 1978
 14 (41 U.S.C. 601 et seq.).”.

15 **SEC. 1066. AWARD OF MULTIPLE CONTRACTS.**

16 Section 303B of the Federal Property and Administra-
 17 tive Services Act of 1949 (41 U.S.C. 253b), as amended by
 18 section 1065, is further amended by adding at the end the
 19 following new subsection:

20 “(i) AWARD OF MULTIPLE CONTRACTS.—In procuring
 21 any supply or service using competitive procedures, an ex-
 22 ecutive agency may award more than one contract for the
 23 same supply or service in any case in which the head of
 24 the agency determines that it is in the best interests of the
 25 Federal Government to award those contracts for the pur-

1 *pose of maintaining a continuous source for the supply or*
 2 *service.”.*

3 **SEC. 1067. DISCOURAGEMENT OF NONSTANDARD CON-**
 4 **TRACT CLAUSES.**

5 *Section 303B of the Federal Property and Administra-*
 6 *tive Services Act of 1949 (41 U.S.C. 253b), as amended by*
 7 *section 1066, is further amended by adding at the end the*
 8 *following new subsection:*

9 *“(j) NONSTANDARD CONTRACT CLAUSES.—The head of*
 10 *each executive agency shall promulgate regulations to dis-*
 11 *courage, to the maximum extent practicable, the use of a*
 12 *nonstandard contract clause on a repetitive basis. The regu-*
 13 *lations shall include provisions that—*

14 *“(1) clearly define nonstandard clauses; and*

15 *“(2) require prior approval for the use of a non-*
 16 *standard clause on a repetitive basis by an official at*
 17 *a level of responsibility above the contracting officer.”.*

18 **Subpart C—Kinds of Contracts**

19 **SEC. 1071. REPEAL OF AGENCY HEAD DETERMINATION RE-**
 20 **GARDING USE OF COST TYPE OR INCENTIVE**
 21 **CONTRACT.**

22 *Section 304(b) of the Federal Property and Adminis-*
 23 *trative Services Act of 1949 (41 U.S.C. 254(b)) is amended*
 24 *by striking out the second sentence.*

1 **SEC. 1072. MULTIYEAR CONTRACTS.**

2 *Title III of the Federal Property and Administrative*
3 *Services Act of 1949 (41 U.S.C. 251 et seq.) is amended*
4 *by inserting after section 304 the following new section:*

5 **“SEC. 304A. MULTIYEAR CONTRACTS.**

6 *“(a) IN GENERAL.—To the extent that funds are other-*
7 *wise available for obligation, the head of an agency may*
8 *make multiyear contracts for the purchase of property,*
9 *whenever the agency head finds—*

10 *“(1) that the use of such a contract will result*
11 *in substantial savings of the total anticipated costs of*
12 *carrying out the program through annual contracts;*

13 *“(2) that the minimum need for the property to*
14 *be purchased is expected to remain substantially un-*
15 *changed during the contemplated contract period in*
16 *terms of production rate, procurement rate, and total*
17 *quantities;*

18 *“(3) that there is a reasonable expectation that*
19 *throughout the contemplated contract period the exec-*
20 *utive agency will request funding for the contract at*
21 *the level required to avoid contract cancellation;*

22 *“(4) that there is a stable design for the property*
23 *to be acquired and that the technical risks associated*
24 *with such property are not excessive; and*

1 “(5) that the estimates of both the cost of the con-
2 tract and the anticipated cost avoidance through the
3 use of a multiyear contract are realistic.

4 “(b)(1) The head of the agency shall prescribe acquisi-
5 tion regulations to promote the use of multiyear contracting
6 as authorized by subsection (a) in a manner that will allow
7 the most efficient use of multiyear contracting.

8 “(2) Such regulations may provide for cancellation
9 provisions in such multiyear contracts to the extent that
10 such provisions are necessary and in the best interests of
11 the United States. Such cancellation provisions may in-
12 clude consideration of both recurring and nonrecurring
13 costs of the contractor associated with the production of the
14 items to be delivered under the contract.

15 “(3) Such regulations shall also provide that, to the
16 extent practicable, the administration of this section, and
17 of the regulations prescribed under this section, shall not
18 be carried out in a manner to preclude or curtail the exist-
19 ing ability of the executive agency to—

20 “(A) provide for competition in the production of
21 items to be delivered under such a contract; or

22 “(B) provide for termination of a prime contract
23 the performance of which is deficient with respect to
24 cost, quality, or schedule.

1 “(c) Before any contract described in subsection (a)
2 that contains a clause setting forth a cancellation ceiling
3 in excess of \$100,000,000 may be awarded, the head of the
4 agency shall give written notification of the proposed con-
5 tract and of the proposed cancellation ceiling for that con-
6 tract to the Congress, and such contract may not then be
7 awarded until the end of a period of 30 days beginning
8 on the date of such notification.

9 “(d) Contracts may be made under this section for ad-
10 vance procurement, if feasible and practical, in order to
11 achieve economic-lot purchases and more efficient produc-
12 tion rates.

13 “(e) In the event funds are not made available for the
14 continuation of a contract made under this section into a
15 subsequent fiscal year, the contract shall be canceled or ter-
16 minated, and the costs of cancellation or termination may
17 be paid from—

18 “(1) appropriations originally available for the
19 performance of the contract concerned;

20 “(2) appropriations currently available for pro-
21 curement of the type of property concerned, and not
22 otherwise obligated; or

23 “(3) funds appropriated for those payments.

1 “(f) This section does not apply to contracts for the
2 purchase of property to which section 111 of this Act ap-
3 plies.

4 “(g) For the purposes of this section, a multiyear con-
5 tract is a contract for the purchase of property or services
6 for more than one, but not more than five, program years.
7 Such a contract may provide that performance under the
8 contract during the second and subsequent years of the con-
9 tract is contingent upon the appropriation of funds and
10 (if it does so provide) may provide for a cancellation pay-
11 ment to be made to the contractor if such appropriations
12 are not made.”.

13 **PART III—ACQUISITIONS GENERALLY**

14 **SEC. 1091. REPEAL OF REQUIREMENT FOR ANNUAL REPORT** 15 **ON COMPETITION.**

16 Section 23 of the Office of Federal Procurement Policy
17 Act (41 U.S.C. 419) is repealed.

18 **Subtitle B—Truth in Negotiations**

19 **PART I—ARMED SERVICES ACQUISITIONS**

20 **SEC. 1201. STABILIZATION OF DOLLAR THRESHOLD OF AP-** 21 **PLICABILITY.**

22 (a) DOLLAR THRESHOLD STABILIZATION FOR
23 OFFERORS FOR PRIME CONTRACTS.—Paragraph (1)(A) of
24 section 2306a(a) of title 10, United States Code, is amend-
25 ed—

1 (1) in clause (i), by striking out “and before
2 January 1, 1996,”; and

3 (2) in clause (ii), by striking out “or after De-
4 cember 31, 1995,”.

5 (b) *ADJUSTMENT OF DOLLAR THRESHOLD.*—Such sec-
6 tion is further amended by adding at the end the following
7 new paragraph:

8 “(7) The dollar amount in each of subparagraphs (A),
9 (B), (C), and (D) of paragraph (1) shall be adjusted on
10 October 1 of each year divisible by 5 to the equivalent
11 amount in constant fiscal year 1993 dollars (rounded to
12 the nearest \$1,000).”.

13 **SEC. 1202. EXCEPTIONS TO COST OR PRICING DATA RE-**
14 **QUIREMENTS.**

15 (a) *EXCEPTIONS.*—Subsection (b) of section 2306a of
16 title 10, United States Code, is amended to read as follows:

17 “(b) *EXCEPTIONS.*—(1) This section shall not be ap-
18 plied to a contract or subcontract, or a modification to a
19 contract or subcontract—

20 “(A) for which the price agreed upon is based
21 on—

22 “(i) adequate price competition;

23 “(ii) established catalog or market prices of
24 commercial items or of services regularly used
25 for other than Federal Government purposes, as

1 the case may be, that are sold in sufficient quan-
2 tities to the general public; or

3 “(iii) prices set by law or regulation; or

4 “(B) in an exceptional case when the head of the
5 agency determines that the requirements of this sec-
6 tion may be waived and states in writing the reasons
7 for such determination.

8 “(2) The Federal Acquisition Regulation (issued under
9 section 25(c) of the Office of Federal Procurement Policy
10 Act (41 U.S.C. 421(c)) shall provide clear standards for de-
11 termining whether the exceptions provided in paragraph
12 (1)(A) apply. In the case of the exception provided in para-
13 graph (1)(A)(i), the regulations shall specify the criteria to
14 be used to determine whether adequate price competition ex-
15 ists. In the case of the exception provided in paragraph
16 (1)(A)(ii), the regulations shall preclude the consideration
17 of sales to the Federal Government, including the percentage
18 of an item’s overall sales that are made to the Federal Gov-
19 ernment, when determining whether the item has been sold
20 in sufficient quantities to the public.”.

21 (b) LIMITATION ON ADDITIONAL AUTHORITY.—Sub-
22 section (c) of such section is amended by adding at the end
23 the following new sentence: “The head of an agency may
24 not require such data to be submitted under this subsection
25 for any contract or subcontract, or modification to a con-

1 *tract or subcontract, covered by the exceptions in subsection*
 2 *(b).”.*

3 **SEC. 1203. RIGHT OF UNITED STATES TO EXAMINE CON-**
 4 **TRACTOR RECORDS.**

5 *Subsection (f) of section 2306a of title 10, United*
 6 *States Code, is amended to read as follows:*

7 *“(f) RIGHT OF UNITED STATES TO EXAMINE CON-*
 8 *TRACTOR RECORDS.—For the purpose of evaluating the ac-*
 9 *curacy, completeness, and currency of cost or pricing data*
 10 *required to be submitted by this section, the head of an*
 11 *agency shall have the rights provided by section 2313(a)(2)*
 12 *of this title.”.*

13 **SEC. 1204. CONSISTENCY OF TIME REFERENCES.**

14 *Section 2306a of title 10, United States Code, is*
 15 *amended—*

16 *(1) in subparagraphs (A)(ii) and (B)(ii) of sub-*
 17 *section (d)(4), by inserting “or, if applicable consist-*
 18 *ent with paragraph (1)(B), another date agreed upon*
 19 *between the parties” after “(or price of the modifica-*
 20 *tion)”;* and

21 *(2) in subsection (g), by inserting “or, if appli-*
 22 *cable consistent with subsection (d)(1)(B), another*
 23 *date agreed upon between the parties” after “(or the*
 24 *price of a contract modification)”.*

1 **SEC. 1205. REPEAL OF SUPERSEDED PROVISION.**

2 *Subsection (c) of section 803 of Public Law 101–510*
 3 *(10 U.S.C. 2306a note) is repealed.*

4 **PART II—CIVILIAN AGENCY ACQUISITIONS**

5 **SEC. 1251. REVISION OF CIVILIAN AGENCY PROVISIONS TO**

6 **ENSURE UNIFORM TREATMENT OF COST OR**

7 **PRICING DATA.**

8 *Title III of the Federal Property and Administrative*
 9 *Services Act of 1949 (41 U.S.C. 251 et seq.) is further*
 10 *amended—*

11 *(1) in section 304, by striking out subsection (d);*

12 *and*

13 *(2) by inserting after section 304A, as added by*
 14 *section 1072, the following new section:*

15 **“SEC. 304B. COST OR PRICING DATA: TRUTH IN NEGOTIA-**
 16 **TIONS.**

17 *“(a) REQUIRED COST OR PRICING DATA AND CERTIFI-*
 18 *CATION.—(1) An agency head shall require offerors, con-*
 19 *tractors, and subcontractors to make cost or pricing data*
 20 *available as follows:*

21 *“(A) An offeror for a prime contract under this*
 22 *title to be entered into using procedures other than*
 23 *sealed-bid procedures shall be required to submit cost*
 24 *or pricing data before the award of a contract if—*

25 *“(i) in the case of a prime contract entered*
 26 *into after the date of the enactment of the Fed-*

1 *eral Acquisition Improvement Act of 1994, the*
2 *price of the contract to the United States is ex-*
3 *pected to exceed \$500,000; and*

4 *“(ii) in the case of a prime contract entered*
5 *into on or before the date of the enactment of the*
6 *Federal Acquisition Improvement Act of 1994,*
7 *the price of the contract to the United States is*
8 *expected to exceed \$100,000.*

9 *“(B) The contractor for a prime contract under*
10 *this chapter shall be required to submit cost or pric-*
11 *ing data before the pricing of a change or modifica-*
12 *tion to the contract if—*

13 *“(i) in the case of a change or modification*
14 *made to a prime contract referred to in subpara-*
15 *graph (A)(i), the price adjustment is expected to*
16 *exceed \$500,000;*

17 *“(ii) in the case of a change or modification*
18 *made to a prime contract that was entered into*
19 *on or before the date of the enactment of the Fed-*
20 *eral Acquisition Improvement Act of 1994, and*
21 *that has been modified pursuant to paragraph*
22 *(6), the price adjustment is expected to exceed*
23 *\$500,000; and*

1 “(iii) in the case of a change or modifica-
2 tion not covered by clause (i) or (ii), the price
3 adjustment is expected to exceed \$100,000.

4 “(C) An offeror for a subcontract (at any tier)
5 of a contract under this title shall be required to sub-
6 mit cost or pricing data before the award of the sub-
7 contract if the prime contractor and each higher-tier
8 subcontractor have been required to make available
9 cost or pricing data under this section and—

10 “(i) in the case of a subcontract under a
11 prime contract referred to in subparagraph
12 (A)(i), the price of the subcontract is expected to
13 exceed \$500,000;

14 “(ii) in the case of a subcontract entered
15 into under a prime contract that was entered
16 into on or before the date of the enactment of the
17 Federal Acquisition Improvement Act of 1994,
18 and that has been modified pursuant to para-
19 graph (6), the price of the subcontract is expected
20 to exceed \$500,000; and

21 “(iii) in the case of a subcontract not cov-
22 ered by clause (i) or (ii), the price of the sub-
23 contract is expected to exceed \$100,000.

24 “(D) The subcontractor for a subcontract covered
25 by subparagraph (C) shall be required to submit cost

1 or pricing data before the pricing of a change or
2 modification to the subcontract if—

3 “(i) in the case of a change or modification
4 to a subcontract referred to in subparagraph
5 (C)(i) or (C)(ii), the price adjustment is expected
6 to exceed \$500,000; and

7 “(ii) in the case of a change or modification
8 to a subcontract referred to in subparagraph
9 (C)(iii), the price adjustment is expected to ex-
10 ceed \$100,000.

11 “(2) A person required, as an offeror, contractor, or
12 subcontractor, to submit cost or pricing data under para-
13 graph (1) (or required by the head of the contracting activ-
14 ity concerned to submit such data under subsection (c))
15 shall be required to certify that, to the best of the person’s
16 knowledge and belief, the cost or pricing data submitted are
17 accurate, complete, and current.

18 “(3) Cost or pricing data required to be submitted
19 under paragraph (1) (or under subsection (c)), and a cer-
20 tification required to be submitted under paragraph (2),
21 shall be submitted—

22 “(A) in the case of a submission by a prime con-
23 tractor (or an offeror for a prime contract), to the
24 contracting officer for the contract (or to a designated
25 representative of the contracting officer); or

1 “(B) in the case of a submission by a sub-
2 contractor (or an offeror for a subcontract), to the
3 prime contractor.

4 “(4) Except as provided under subsection (b), this sec-
5 tion applies to contracts entered into by an agency head
6 on behalf of a foreign government.

7 “(5) For purposes of paragraph (1)(C), a contractor
8 or subcontractor granted a waiver under subsection (b)(2)
9 shall be considered as having been required to make avail-
10 able cost or pricing data under this section.

11 “(6) Upon the request of a contractor that was required
12 to submit cost or pricing data under paragraph (1) in con-
13 nection with a prime contract entered into on or before the
14 date of the enactment of the Federal Acquisition Improve-
15 ment Act of 1994, the agency head that entered into such
16 contract shall modify the contract to reflect subparagraphs
17 (B)(ii) and (C)(ii) of paragraph (1). All such modifications
18 shall be made without requiring consideration.

19 “(7) The dollar amount in each of subparagraphs (A),
20 (B), (C), and (D) of paragraph (1) shall be adjusted on
21 October 1 of each year divisible by 5 to the equivalent
22 amount in constant fiscal year 1993 dollars (rounded to
23 the nearest \$1,000).

1 “(b) *EXCEPTIONS.—(1) This section shall not be ap-*
2 *plied to a contract or subcontract, or a modification to a*
3 *contract or subcontract—*

4 “(A) *for which the price agreed upon is based*
5 *on—*

6 “(i) *adequate price competition;*

7 “(ii) *established catalog or market prices of*
8 *commercial items or of services regularly used*
9 *for other than Federal Government purposes, as*
10 *the case may be, that are sold in sufficient quan-*
11 *tities to the general public; or*

12 “(iii) *prices set by law or regulation; or*

13 “(B) *in an exceptional case when the head of the*
14 *agency determines that the requirements of this sec-*
15 *tion may be waived and states in writing the reasons*
16 *for such determination.*

17 “(2) *The Federal Acquisition Regulation (issued under*
18 *section 25(c) of the Office of Federal Procurement Policy*
19 *Act (41 U.S.C. 421(c)) shall provide clear standards for de-*
20 *termining whether the exceptions provided in paragraph*
21 *(1)(A) apply. In the case of the exception provided in para-*
22 *graph (1)(A)(i), the regulations shall specify the criteria to*
23 *be used to determine whether adequate price competition ex-*
24 *ists. In the case of the exception provided in paragraph*
25 *(1)(A)(ii), the regulations shall preclude the consideration*

1 *of sales to the Federal Government, including the percentage*
2 *of an item's overall sales that are made to the Federal Gov-*
3 *ernment, when determining whether the item has been sold*
4 *in sufficient quantities to the public.*

5 “(c) *AUTHORITY TO REQUIRE COST OR PRICING*
6 *DATA.—When cost or pricing data are not required to be*
7 *submitted by subsection (a), such data may nevertheless be*
8 *required to be submitted by the head of the agency if the*
9 *head of the agency determines that such data are necessary*
10 *for the evaluation by the agency of the reasonableness of*
11 *the price of the contract or subcontract. In any case in*
12 *which the head of the agency requires such data to be sub-*
13 *mitted under this subsection, the head of the agency shall*
14 *document in writing the reasons for such requirement. The*
15 *head of an agency may not require such data to be submit-*
16 *ted under this subsection for any contract or subcontract,*
17 *or modification to a contract or subcontract, covered by the*
18 *exceptions in subsection (b).*

19 “(d) *PRICE REDUCTIONS FOR DEFECTIVE COST OR*
20 *PRICING DATA.—(1)(A) A prime contract (or change or*
21 *modification to a prime contract) under which a certificate*
22 *under subsection (a)(2) is required shall contain a provi-*
23 *sion that the price of the contract to the United States, in-*
24 *cluding profit or fee, shall be adjusted to exclude any sig-*
25 *nificant amount by which it may be determined by the*

1 agency head that such price was increased because the con-
2 tractor (or any subcontractor required to make available
3 such a certificate) submitted defective cost or pricing data.

4 “(B) For the purposes of this section, defective cost or
5 pricing data are cost or pricing data which, as of the date
6 of agreement on the price of the contract (or another date
7 agreed upon between the parties), were inaccurate, incom-
8 plete, or noncurrent. If for purposes of the preceding sen-
9 tence the parties agree upon a date other than the date of
10 agreement on the price of the contract, the date agreed upon
11 by the parties shall be as close to the date of agreement on
12 the price of the contract as is practicable.

13 “(2) In determining for purposes of a contract price
14 adjustment under a contract provision required by para-
15 graph (1) whether, and to what extent, a contract price was
16 increased because the contractor (or a subcontractor) sub-
17 mitted defective cost or pricing data, it shall be a defense
18 that the United States did not rely on the defective data
19 submitted by the contractor or subcontractor.

20 “(3) It is not a defense to an adjustment of the price
21 of a contract under a contract provision required by para-
22 graph (1) that—

23 “(A) the price of the contract would not have
24 been modified even if accurate, complete, and current
25 cost or pricing data had been submitted by the con-

1 *tractor or subcontractor because the contractor or sub-*
2 *contractor—*

3 *“(i) was the sole source of the property or*
4 *services procured; or*

5 *“(ii) otherwise was in a superior bargain-*
6 *ing position with respect to the property or serv-*
7 *ices procured;*

8 *“(B) the contracting officer should have known*
9 *that the cost and pricing data in issue were defective*
10 *even though the contractor or subcontractor took no*
11 *affirmative action to bring the character of the data*
12 *to the attention of the contracting officer;*

13 *“(C) the contract was based on an agreement be-*
14 *tween the contractor and the United States about the*
15 *total cost of the contract and there was no agreement*
16 *about the cost of each item procured under such con-*
17 *tract; or*

18 *“(D) the prime contractor or subcontractor did*
19 *not submit a certification of cost and pricing data re-*
20 *lating to the contract as required under subsection*
21 *(a)(2).*

22 *“(4)(A) A contractor shall be allowed to offset an*
23 *amount against the amount of a contract price adjustment*
24 *under a contract provision required by paragraph (1) if—*

1 “(i) the contractor certifies to the contracting of-
2 ficer (or to a designated representative of the contract-
3 ing officer) that, to the best of the contractor’s knowl-
4 edge and belief, the contractor is entitled to the offset;
5 and

6 “(ii) the contractor proves that the cost or pric-
7 ing data were available before the date of agreement
8 on the price of the contract (or price of the modifica-
9 tion), or, if applicable consistent with paragraph
10 (1)(B), another date agreed upon between the parties,
11 and that the data were not submitted as specified in
12 subsection (a)(3) before such date.

13 “(B) A contractor shall not be allowed to offset an
14 amount otherwise authorized to be offset under subpara-
15 graph (A) if—

16 “(i) the certification under subsection (a)(2)
17 with respect to the cost or pricing data involved was
18 known to be false when signed; or

19 “(ii) the United States proves that, had the cost
20 or pricing data referred to in subparagraph (A)(ii)
21 been submitted to the United States before the date of
22 agreement on the price of the contract (or price of the
23 modification) or, if applicable under paragraph
24 (1)(B), another date agreed upon between the parties,
25 the submission of such cost or pricing data would not

1 *have resulted in an increase in that price in the*
2 *amount to be offset.*

3 “(e) *INTEREST AND PENALTIES FOR CERTAIN OVER-*
4 *PAYMENTS.—(1) If the United States makes an overpay-*
5 *ment to a contractor under a contract with an executive*
6 *agency subject to this section and the overpayment was due*
7 *to the submission by the contractor of defective cost or pric-*
8 *ing data, the contractor shall be liable to the United*
9 *States—*

10 “(A) *for interest on the amount of such overpay-*
11 *ment, to be computed—*

12 “(i) *for the period beginning on the date the*
13 *overpayment was made to the contractor and*
14 *ending on the date the contractor repays the*
15 *amount of such overpayment to the United*
16 *States; and*

17 “(ii) *at the current rate prescribed by the*
18 *Secretary of the Treasury under section 6621 of*
19 *the Internal Revenue Code of 1986; and*

20 “(B) *if the submission of such defective data was*
21 *a knowing submission, for an additional amount*
22 *equal to the amount of the overpayment.*

23 “(2) *Any liability under this subsection of a contractor*
24 *that submits cost or pricing data but refuses to submit the*
25 *certification required by subsection (a)(2) with respect to*

1 *the cost or pricing data shall not be affected by the refusal*
 2 *to submit such certification.*

3 “(f) *RIGHT OF UNITED STATES TO EXAMINE CON-*
 4 *TRACTOR RECORDS.*—*For the purpose of evaluating the ac-*
 5 *curacy, completeness, and currency of cost or pricing data*
 6 *required to be submitted by this section, the head of an*
 7 *agency shall have the rights provided by section 304C(a)(2).*

8 “(g) *COST OR PRICING DATA DEFINED.*—*In this sec-*
 9 *tion, the term ‘cost or pricing data’ means all facts that,*
 10 *as of the date of agreement on the price of a contract (or*
 11 *the price of a contract modification) or, if applicable con-*
 12 *sistent with subsection (d)(1)(B), another date agreed upon*
 13 *between the parties, a prudent buyer or seller would reason-*
 14 *ably expect to affect price negotiations significantly. Such*
 15 *terms does not include information that is judgmental, but*
 16 *does include the factual information from which a judgment*
 17 *was derived.”.*

18 **SEC. 1252. REPEAL OF OBSOLETE PROVISION.**

19 *Section 303E of the Federal Property and Administra-*
 20 *tive Services Act of 1949 (41 U.S.C. 253e) is repealed.*

***Subtitle C—Research and
Development***

***SEC. 1301. COOPERATIVE AGREEMENTS FOR BASIC, AP-
PLIED, AND ADVANCED RESEARCH.***

*Title III of the Federal Property and Administrative
Service Act of 1949 (41 U.S.C. 251 et seq.) is amended by
adding at the end the following new section:*

***“SEC. 311. COOPERATIVE AGREEMENTS FOR BASIC, AP-
PLIED, AND ADVANCED RESEARCH.***

*“(a) An executive agency, in carrying out basic, ap-
plied, and advanced research projects, may enter into coop-
erative agreements and other transactions with any person,
any agency or instrumentality of the United States, any
unit of State or local government, any educational institu-
tion, and any other entity.*

*“(b)(1) Cooperative agreements and other transactions
entered into under subsection (a) may include a clause that
requires a person or other entity to make payments to any
department or agency of the Federal Government as a con-
dition of receiving support under the agreement or other
transaction.*

*“(2) The amount of any payment received by the Fed-
eral Government pursuant to a requirement imposed under
paragraph (1) may be credited, to the extent authorized by
an agency head, to the appropriate account established*

1 *under subsection (c). Amounts so credited shall be merged*
2 *with other funds in the account and shall be available for*
3 *the same purposes and the same period for which other*
4 *funds in such account are available.*

5 *“(c) The authority provided under subsection (a) may*
6 *be exercised without regard to section 3324 of title 31, Unit-*
7 *ed States Code.*

8 *“(d) The head of the executive agency shall ensure*
9 *that—*

10 *“(1) to the maximum extent practicable, a coop-*
11 *erative agreement or other transaction under this sec-*
12 *tion does not provide for research that duplicates re-*
13 *search being conducted under existing programs car-*
14 *ried out by the executive agency;*

15 *“(2) to the extent the agency head determines*
16 *practicable, the funds provided by the Government*
17 *under the cooperative agreement or other transaction*
18 *do not exceed the total amount provided by other par-*
19 *ties to the cooperative agreement or other transaction;*
20 *and*

21 *“(3) the authority under this section is used only*
22 *when the use of standard contracts or grants is not*
23 *feasible or appropriate.*

24 *“(e) There is hereby established on the books of the*
25 *Treasury separate accounts for each executive agency for*

1 *support of advanced research projects provided for in coop-*
2 *erative agreements and other transactions entered into*
3 *under subsection (a). Funds in those accounts shall be avail-*
4 *able for the payment of such support.*

5 “(f) An executive agency, in carrying out research
6 projects, may permit the director of any federally funded
7 research and development center to enter into cooperative
8 research and development agreements with any person, any
9 agency or instrumentality of the United States, any unit
10 of State or local government, and any other entity under
11 the authority granted by section 11 of the Stevenson-Wydler
12 Technology Innovation Act of 1980 (15 U.S.C. 3710a).
13 Technology may be transferred to a non-Federal party to
14 such an agreement consistent with the provisions of sections
15 10 and 11 of such Act (15 U.S.C. 3710, 3710a).”.

16 **SEC. 1302. COMPETITION REQUIREMENT FOR AWARDS OF**
17 **GRANTS AND CONTRACTS TO COLLEGES AND**
18 **UNIVERSITIES.**

19 Subsections (a) and (b) of section 2361 of title 10,
20 United States Code, are amended by inserting “or nonprofit
21 organization other than a federally funded research and de-
22 velopment center (FFRDC)” after “college or university”
23 each place it appears.

1 ***Subtitle D—Procurement Protests***

2 ***PART I—PROTESTS TO THE COMPTROLLER***

3 ***GENERAL***

4 ***SEC. 1401. REVIEW OF PROTESTS AND EFFECT ON CON-***
5 ***TRACTS PENDING DECISION.***

6 (a) *CLARIFICATION OF PERIOD FOR CERTAIN AC-*
7 *TION.—Paragraph (3) of section 3553(c) of title 31, United*
8 *States Code, is amended by striking out “thereafter” and*
9 *inserting in lieu thereof “after the making of such finding”.*

10 (b) *SUSPENSION OF PERFORMANCE.—Subsection (d) of*
11 *such section is amended to read as follows:*

12 “(d) *AUTHORIZATION AND SUSPENSION OF PERFORM-*
13 *ANCE.—*

14 “(1) *AUTHORIZATION REQUIRED.—A contractor*
15 *awarded a Federal agency contract may not begin*
16 *performance of the contract or engage in any related*
17 *activities that result in obligations being incurred by*
18 *the United States until receipt of an authorization to*
19 *proceed with performance of the contract from the*
20 *contracting officer responsible for the award of the*
21 *contract.*

22 “(2) *PROHIBITION OF AUTHORIZATION UNDER*
23 *CERTAIN CONDITIONS.—A contracting officer may not*
24 *authorize a contractor to proceed with performance of*
25 *the contract if—*

1 “(A) a protest is likely to be filed; and

2 “(B) the immediate performance of the con-
3 tract is not in the best interests of the United
4 States.

5 “(3) *SUSPENSION DURING PERIOD WHEN PRO-*
6 *TEST IS PENDING.—(A) If the Federal agency award-*
7 *ing the contract receives notice of a protest in accord-*
8 *ance with this section during the period described in*
9 *subparagraph (B)—*

10 “(i) the contracting officer may not author-
11 ize performance of the contract to begin while the
12 protest is pending; and

13 “(ii) if contract performance was authorized
14 in accordance with paragraph (2) before receipt
15 of the notice, the contracting officer shall imme-
16 diately direct the contractor to cease performance
17 under the contract and to suspend any related
18 activities that may result in additional obliga-
19 tions being incurred by the United States under
20 that contract.

21 “(B) The period referred to in subparagraph (A),
22 with respect to a contract, is the period beginning on
23 the date on which the contract is awarded and ending
24 on the later of—

1 “(i) the date that is 8 working days after
2 such date of contract award; or

3 “(ii) in the case of a procurement with re-
4 spect to which an unsuccessful offeror has re-
5 quested a debriefing in accordance with section
6 2305(b)(5) of title 10 or section 303B(e) of the
7 Federal Property and Administrative Services
8 Act of 1949, as applicable, the date that is 5
9 working days after the date on which the Federal
10 agency debriefs the unsuccessful offeror.

11 “(C) Performance and related activities sus-
12 pended pursuant to subparagraph (A)(ii) by reason of
13 a protest may not be resumed while the protest is
14 pending.

15 “(D) The head of the contracting activity may
16 authorize the performance of the contract (notwith-
17 standing a protest of which the Federal agency has
18 notice under this section)—

19 “(i) upon a written finding—

20 “(I) that performance of the contract is
21 in the best interests of the United States; or

22 “(II) that urgent and compelling cir-
23 cumstances that significantly affect interests
24 of the United States will not permit waiting

1 for the decision of the Comptroller General
2 concerning the protest; and
3 “(ii) after the Comptroller General is noti-
4 fied of that finding.”.

5 **SEC. 1402. DECISIONS ON PROTESTS.**

6 (a) *PERIOD FOR RESOLUTION OF AMENDMENTS TO*
7 *PROTESTS.*—Section 3554(a) of title 31, United States
8 Code, is amended—

9 (1) by redesignating paragraph (3) as para-
10 graph (4); and

11 (2) by inserting after paragraph (2) the follow-
12 ing new paragraph (3):

13 “(3) An amendment to a protest that adds a new
14 ground of protest, if timely raised, should be resolved, to
15 the maximum extent practicable, within the time limit es-
16 tablished under paragraph (1) of this subsection for final
17 decision of the initial protest. If an amended protest cannot
18 be resolved within such time limit, the Comptroller General
19 may resolve the amended protest through the express option
20 under paragraph (2) of this subsection.”.

21 (b) *GAO RECOMMENDATIONS ON PROTESTS.*—

22 (1) *IMPLEMENTATION OF RECOMMENDATIONS.*—
23 Section 3554 of title 31, United States Code, is
24 amended—

1 (A) in subsection (b), by adding at the end
2 the following new paragraph:

3 “(3) If the Federal agency fails to implement fully the
4 recommendations of the Comptroller General under this
5 subsection with respect to a solicitation for a contract or
6 an award or proposed award of a contract within 60 days
7 after receiving the recommendations, the head of the con-
8 tracting activity responsible for that contract shall report
9 such failure to the Comptroller General not later than 5
10 working days after the end of such 60-day period.”;

11 (B) by striking out subsection (c) and in-
12 serting in lieu thereof the following:

13 “(c)(1) If the Comptroller General determines that a
14 solicitation for a contract or a proposed award or the award
15 of a contract does not comply with a statute or regulation,
16 the Comptroller General may recommend that the Federal
17 agency conducting the procurement pay to an appropriate
18 interested party the costs of—

19 “(A) filing and pursuing the protest, including
20 reasonable attorney’s fees and consultant and expert
21 witness fees; and

22 “(B) bid and proposal preparation.

23 “(2) If the Comptroller General recommends under
24 paragraph (1) that a Federal agency pay costs to an inter-
25 ested party, the Federal agency shall—

1 “(A) pay the costs promptly out of funds avail-
2 able to or for the use of the Federal agency; or

3 “(B) if the Federal agency does not make such
4 payment, promptly report to the Comptroller General
5 the reasons for the failure to follow the Comptroller
6 General’s recommendation.

7 “(3) If the Comptroller General recommends under
8 paragraph (1) that a Federal agency pay costs to an inter-
9 ested party, the Federal agency and the interested party
10 shall attempt to reach an agreement on the amount of the
11 costs to be paid. If the Federal agency and the interested
12 party are unable to agree on the amount to be paid, the
13 Comptroller General may, upon the request of the interested
14 party, recommend to the Federal agency the amount of the
15 costs that the Federal agency should pay.”; and

16 (C) by striking out subsection (e) and in-
17 serting in lieu thereof the following:

18 “(e)(1) The Comptroller General shall report promptly
19 to the Committee on Governmental Affairs and the Commit-
20 tee on Appropriations of the Senate and to the Committee
21 on Government Operations and the Committee on Appro-
22 priations of the House of Representatives any case in which
23 a Federal agency fails to implement fully a recommenda-
24 tion of the Comptroller General under subsection (b) or (c).
25 The report shall include—

1 “(A) a comprehensive review of the pertinent
2 procurement, including the circumstances of the fail-
3 ure of the Federal agency to implement a rec-
4 ommendation of the Comptroller General; and

5 “(B) a recommendation regarding whether, in
6 order to correct an inequity or to preserve the integ-
7 rity of the procurement process, the Congress should
8 consider—

9 “(i) private relief legislation;

10 “(ii) further investigation by the Congress;

11 or

12 “(iii) other action.

13 “(2) Not later than January 31 of each year, the
14 Comptroller General shall transmit to the Congress a report
15 containing a summary of each instance in which a Federal
16 agency did not fully implement a recommendation of the
17 Comptroller General under subsection (b) or (c) during the
18 preceding year. The report shall also describe each instance
19 in which a final decision in a protest was not rendered
20 within 125 days after the date the protest is submitted to
21 the Comptroller General.”.

22 (2) REQUIREMENT FOR PAYMENT IN ACCORD-
23 ANCE WITH PRIOR GAO DETERMINATIONS.—Amounts
24 to which the Comptroller General declared an inter-
25 ested party to be entitled under section 3554 of title

1 31, United States Code, as in effect immediately be-
2 fore the enactment of this Act, shall, if not paid or
3 otherwise satisfied by the Federal agency concerned
4 before the date of the enactment of this Act, be paid
5 out of funds available to or for the use of the Federal
6 agency.

7 (c) *RECOVERY OF COSTS FOR FRIVOLOUS PRO-*
8 *TESTS.*—Such section is further amended by adding at the
9 end the following new subsection:

10 “(f) If the Comptroller General expressly finds that a
11 protest or a portion of a protest is frivolous or has not been
12 brought or pursued in good faith, the Comptroller may rec-
13 ommend that the protester or other interested party who
14 joins the protest be liable to the United States for payment
15 of all or that portion of the United States costs, for which
16 such a finding is made, of reviewing the protest, including
17 the fees and other expenses (as defined in section
18 2412(d)(2)(A) of title 28) incurred by the United States in
19 defending the protest. The Federal Acquisition Regulation
20 shall provide guidance under which the head of an agency
21 may initiate action to obtain such costs, unless (A) special
22 circumstances would make such payment unjust, or (B) the
23 protester obtains documents or other information for the
24 first time, after the protest is filed with the Comptroller
25 General, which establishes that the protest or a portion is

1 *frivolous or has not been brought in good faith and the pro-*
2 *tester then promptly withdraws the protest or portion of*
3 *the protest.”.*

4 (d) *RESTRICTION ON ACCESS TO CERTAIN INFORMA-*
5 *TION.—Section 3553(f) of title 31, United States Code, is*
6 *amended—*

7 (1) *by inserting “(1)” after “(f)”;* and

8 (2) *by adding at the end the following:*

9 “(2)(A) *The Comptroller General may issue protective*
10 *orders which establish terms, conditions, and restrictions for*
11 *the provision of any document to a person under paragraph*
12 *(1), that prohibit or restrict the disclosure by the person*
13 *of information described in subparagraph (C) that is con-*
14 *tained in such a document.*

15 “(B) *The penalties specified under section 27(i) of the*
16 *Office of Federal Procurement Policy Act shall apply to the*
17 *disclosure of information described in subparagraph (C) in*
18 *violation of a term, condition, or restriction in a protective*
19 *order under this paragraph by a person that is subject to*
20 *the protective order.*

21 “(C) *Information referred to in subparagraphs (A)*
22 *and (B) is procurement sensitive information, trade secrets,*
23 *or other proprietary or confidential research, development,*
24 *or commercial information.*

1 “(D) A protective order under this paragraph shall not
2 be considered to authorize the withholding of any document
3 or information from the Congress or an executive agency.”.

4 **SEC. 1403. REGULATIONS.**

5 (a) *COMPUTATION OF PERIODS.*—Section 3555 of title
6 31, United States Code, is amended—

7 (1) by redesignating subsection (b) as subsection
8 (d); and

9 (2) by inserting after subsection (a) the following
10 new subsection (b):

11 “(b) The procedures shall provide that, in the computa-
12 tion of any period described in this subchapter—

13 “(1) the day of the act, event, or default from
14 which the designated period of time begins to run not
15 be included; and

16 “(2) the last day after such act, event, or default
17 be included, unless—

18 “(A) such last day is a Saturday, a Sun-
19 day, or a legal holiday; or

20 “(B) in the case of a filing of a paper at
21 the General Accounting Office or a Federal agen-
22 cy, such last day is a day on which weather or
23 other conditions make the General Accounting
24 Office or Federal agency inaccessible, in which

1 event the next day that is not a Saturday, Sun-
2 day, or legal holiday shall be included.”.

3 (b) *ELECTRONIC FILINGS AND DISSEMINATIONS.*—
4 Such section, as amended by subsection (a), is further
5 amended by inserting after subsection (b) the following new
6 subsection:

7 “(c) The Comptroller General may prescribe proce-
8 dures for the electronic filing and dissemination of docu-
9 ments and information required under this subchapter. In
10 prescribing such procedures, the Comptroller General shall
11 consider the ability of all parties to achieve electronic access
12 to such documents and records.”.

13 (c) *REPEAL OF OBSOLETE DEADLINE.*—Subsection (a)
14 of such section is amended by striking out “Not later than
15 January 15, 1985, the” and inserting in lieu thereof “The”.

16 **PART II—PROTESTS IN PROCUREMENTS OF**
17 **AUTOMATIC DATA PROCESSING**

18 **SEC. 1431. PERIODS FOR CERTAIN ACTIONS.**

19 (a) *SUSPENSION OF PROCUREMENT AUTHORITY.*—(1)
20 Paragraph (2)(B) of section 111(f) of the Federal Property
21 and Administrative Services Act of 1949 (40 U.S.C. 759(f))
22 is amended—

23 (A) by redesignating clauses (i) and (ii) as
24 subclauses (I) and (II), respectively;

25 (B) by inserting “(i)” after “(B)”; and

1 (C) by adding at the end the following:

2 “(ii) A suspension under this subparagraph shall not
3 preclude the Federal agency concerned from continuing the
4 procurement process up to but not including award of the
5 contract if the Board determines such action is in the best
6 interests of the United States.”.

7 (2) Paragraph (3) of such section is amended by strik-
8 ing out subparagraph (A) and inserting in lieu thereof the
9 following:

10 “(A)(i) If, with respect to an award of a contract, the
11 board receives notice of a protest under this subsection with-
12 in the period described in clause (ii), the board shall, at
13 the request of an interested party, hold a hearing to deter-
14 mine whether the board should suspend the procurement au-
15 thority of the Administrator or the Administrator’s delega-
16 tion of procurement authority for the protested procurement
17 on an interim basis until the board can decide the protest.

18 “(ii) The period referred to in clause (i) is the period
19 beginning on the date on which the contract is awarded and
20 ending on the later of—

21 “(I) the date that is 8 working days after such
22 contract award date; or

23 “(II) in the case of a procurement with respect
24 to which an unsuccessful offeror has requested a de-
25 briefing in accordance with section 303B(e), the date

1 that is 5 working days after the date on which the
2 Federal agency debriefs the unsuccessful offeror.

3 “(iii) The board shall hold the requested hearing with-
4 in 7 working days after the date of the filing of the protest.”.

5 (b) *RESOLUTION OF AMENDMENTS TO PROTESTS.*—
6 Paragraph (4)(B) of such section is amended by adding at
7 the end the following: “An amendment which adds a new
8 ground of protest should be resolved, to the maximum extent
9 practicable, within the time limits established for resolution
10 of the initial protest.”.

11 **SEC. 1432. DISMISSALS OF FRIVOLOUS PROTESTS AND RE-**
12 **COVERY OF COSTS.**

13 Section 111(f)(4) of the Federal Property and Admin-
14 istrative Services Act of 1949 (40 U.S.C. 759(f)(4)) is
15 amended by striking out subparagraph (C) and inserting
16 in lieu thereof the following new subparagraphs:

17 “(C) The board may dismiss a protest that the board
18 determines—

19 “(i) is frivolous;

20 “(ii) has been brought in bad faith; or

21 “(iii) does not state on its face a valid basis for
22 protest.

23 “(D) If the board makes a determination under sub-
24 paragraph (C), the board may impose appropriate sanc-
25 tions. Such sanctions may include imposition of liability

1 on the protester, or other interested party who joins the pro-
 2 test, for payment to the United States of all or that portion
 3 of the United States costs, for which such a finding is made,
 4 of reviewing the protest, including the fees and other ex-
 5 penses (as defined in section 2412(d)(2)(A) of title 28) in-
 6 curred by the United States in defending the protest. The
 7 Federal Acquisition Regulation shall provide guidance
 8 under which the head of an agency may initiate action to
 9 obtain such costs, unless (i) special circumstances would
 10 make such payment unjust, or (ii) the protester obtains doc-
 11 uments or other information for the first time, after the pro-
 12 test is filed with the board, which establishes that the protest
 13 or a portion is frivolous or has not been brought in good
 14 faith and the protester then promptly withdraws the protest
 15 or portion of the protest.”.

16 **SEC. 1433. AWARD OF COSTS.**

17 Section 111(f)(5) of the Federal Property and Admin-
 18 istrative Services Act of 1949 (40 U.S.C. 759(f)(5)) is
 19 amended by striking out subparagraph (C) and inserting
 20 in lieu thereof the following:

21 “(C) Whenever the board makes such a determination,
 22 it may, in accordance with section 1304 of title 31, United
 23 States Code, further declare an appropriate prevailing
 24 party to be entitled to the cost of filing and pursuing the
 25 protest (including reasonable attorney’s fees and consultant

1 *and expert witness fees), and bid and proposal prepara-*
2 *tion.”.*

3 ***SEC. 1434. DISMISSAL AGREEMENTS.***

4 *Section 111(f)(5) of the Federal Property and Admin-*
5 *istrative Services Act of 1949 (40 U.S.C. 759(f)(5)), as*
6 *amended by section 1434, is further amended by adding at*
7 *the end the following new subparagraphs:*

8 *“(D) Any agreement that provides for the dismissal*
9 *of a protest and involves a direct or indirect expenditure*
10 *of appropriated funds shall be submitted to the board and*
11 *shall be made a part of the public record (subject to any*
12 *protective order considered appropriate by the board) before*
13 *dismissal of the protest. If a Federal agency is a party to*
14 *a settlement agreement, the submission of the agreement*
15 *submitted to the board shall include a memorandum, signed*
16 *by the contracting officer concerned, that describes in detail*
17 *the procurement, the grounds for protest, the Federal Gov-*
18 *ernment’s position regarding the grounds for protest, the*
19 *terms of the settlement, and the agency’s position regarding*
20 *the propriety of the award or proposed award of the con-*
21 *tract at issue in the protest.*

22 *“(E) Payment of amounts due from an agency under*
23 *subparagraph (C) or under the terms of a settlement agree-*
24 *ment under subparagraph (D) shall be made from the ap-*
25 *propriation made by section 1304 of title 31, United States*

1 *Code, for the payment of judgments. The Federal agency*
 2 *concerned shall reimburse that appropriation account out*
 3 *of funds available for the procurement.”.*

4 ***SEC. 1435. MATTERS TO BE COVERED IN REGULATIONS.***

5 *Section 111(f) of the Federal Property and Adminis-*
 6 *trative Services Act of 1949 (40 U.S.C. 759(f)) is amend-*
 7 *ed—*

8 *(1) by striking out paragraph (8);*

9 *(2) by redesignating paragraph (9) as para-*
 10 *graph (8); and*

11 *(3) by inserting after paragraph (6) the follow-*
 12 *ing:*

13 *“(7)(A) The board shall adopt and issue such rules and*
 14 *procedures as may be necessary to the expeditious disposi-*
 15 *tion of protests filed under the authority of this subsection.*

16 *“(B) The procedures shall provide that, in the com-*
 17 *putation of any period described in this subsection—*

18 *“(i) the day of the act, event, or default from*
 19 *which the designated period of time begins to run not*
 20 *be included; and*

21 *“(ii) the last day after such act, event, or default*
 22 *be included, unless—*

23 *“(I) such last day is a Saturday, a Sunday,*
 24 *or a legal holiday; or*

1 “(II) in the case of a filing of a paper at
 2 the board, such last day is a day on which
 3 weather or other conditions make the board or
 4 Federal agency inaccessible, in which event the
 5 next day that is not a Saturday, Sunday, or
 6 legal holiday shall be included.

7 “(C) The procedures may provide for electronic filing
 8 and dissemination of documents and information required
 9 under this subsection and in so providing shall consider the
 10 ability of all parties to achieve electronic access to such doc-
 11 uments and records.”.

12 **SEC. 1436. OVERSIGHT OF ACQUISITION OF AUTOMATIC**
 13 **DATA PROCESSING EQUIPMENT BY FEDERAL**
 14 **AGENCIES.**

15 Section 111 of the Federal Property and Administra-
 16 tive Services Act of 1949 (40 U.S.C. 759) is amended by
 17 adding at the end the following new subsection:

18 “(h)(1) The Administrator shall collect and compile
 19 data regarding the procurement of automatic data process-
 20 ing equipment under this section. The data collected and
 21 compiled shall include, at a minimum, with regard to each
 22 procurement the following:

23 “(A) The procuring agency.

24 “(B) The contractor.

1 “(C) *The automatic data processing equipment*
2 *and services procured.*

3 “(D) *The manufacturer of the equipment pro-*
4 *cured.*

5 “(E) *The amount of the contract, to the extent*
6 *that the amount is not proprietary information.*

7 “(F) *The type of contract used.*

8 “(G) *The extent of competition for award.*

9 “(H) *Compatibility restrictions.*

10 “(I) *Significant modifications of the contract.*

11 “(J) *Contract price, to the extent that the price*
12 *is not proprietary information.*

13 “(2) *The head of each Federal agency shall report to*
14 *the Administrator in accordance with regulations issued by*
15 *the Administrator all information that the Administrator*
16 *determines necessary in order to satisfy the requirements*
17 *in paragraph (1).*

18 “(3) *The Administrator shall—*

19 “(A) *carry out a systematic, periodic review of*
20 *information received under this subsection; and*

21 “(B) *use such information, as appropriate, to de-*
22 *termine the compliance of Federal agencies with the*
23 *requirements of this section.”.*

1 **Subtitle E—Policy, Definitions, and**
2 **Other Matters**

3 **PART I—ARMED SERVICES ACQUISITIONS**

4 **SEC. 1501. CONGRESSIONAL DEFENSE PROCUREMENT POL-**
5 **ICY.**

6 *Section 2301 of title 10, United States Code, is amend-*
7 *ed to read as follows:*

8 **“§ 2301. Congressional defense procurement policy**

9 “(a) *The Congress finds that in order to ensure na-*
10 *tional defense preparedness; conserve fiscal resources; en-*
11 *hance science and technology, research and development,*
12 *and production capability; provide for continued develop-*
13 *ment and preservation of an efficient and responsive defense*
14 *industrial base; and ensure the financial and ethical integ-*
15 *riety of defense procurement programs, it is in the interest*
16 *of the United States that property and services be acquired*
17 *for the Department of Defense in the most timely, economic,*
18 *and efficient manner consistent with achieving an optimum*
19 *balance among efficient processes, full and open access to*
20 *the procurement system, and sound implementation of so-*
21 *cioeconomic policies. It is therefore the policy of Congress*
22 *that—*

23 “(1) *full and open competitive procedures shall*
24 *be used by the Department of Defense in accordance*
25 *with the requirements of this chapter;*

1 “(2) to the maximum extent practicable, the De-
2 partment of Defense shall acquire commercial items to
3 meet its needs and shall require prime contractors
4 and subcontractors, at all levels, which furnish other
5 than commercial items, to incorporate to the maxi-
6 mum extent practicable commercial items as compo-
7 nents of items being supplied to the Department;

8 “(3) when commercial items and components are
9 not available, practicable, or cost effective, the De-
10 partment of Defense shall acquire, and shall require
11 prime contractors and subcontractors to incorporate,
12 nondevelopmental items and components to the maxi-
13 mum extent practicable;

14 “(4) property and services for the Department of
15 Defense may be acquired by any kind of contract,
16 other than cost-plus-a-percentage-of-cost contracts, but
17 including multiyear contracts, that will promote the
18 interest of the United States and will provide for ap-
19 propriate allocation of risk between the Government
20 and the contractor with due regard to the nature of
21 the property or services to be acquired;

22 “(5) contracts, when appropriate, shall provide
23 incentives to contractors to improve productivity
24 through investment in capital facilities, equipment,

1 *flexible manufacturing processes, and advanced and*
2 *dual-use technology;*

3 *“(6) contracts for advance procurement of com-*
4 *ponents, parts, and materials necessary for manufac-*
5 *ture or for logistics support of a weapon system*
6 *should, if practicable, be entered into in a manner to*
7 *achieve economic-lot purchases and more efficient pro-*
8 *duction rates;*

9 *“(7) procurement protests and disputes shall be*
10 *fairly and expeditiously resolved through uniform in-*
11 *terpretation of relevant laws and regulations;*

12 *“(8) the head of an agency shall use advance*
13 *procurement planning and market research and de-*
14 *velop contract requirements in such a manner as is*
15 *necessary to obtain full and open competition with*
16 *due regard to the nature of the property or services*
17 *to be acquired; but may restrict competitions to sup-*
18 *pliers of commercial items to foster accomplishment of*
19 *the above objective; and*

20 *“(9) the head of an agency shall develop and*
21 *maintain an acquisition career management program*
22 *to ensure a professional acquisition work force in ac-*
23 *cordance with the requirements of chapter 87 of this*
24 *title.*

1 “(b) Further, it is the policy of Congress that procure-
2 ment policies and procedures for the agencies named in sec-
3 tion 2303 of this title shall, in accordance with the require-
4 ments of this title—

5 “(1) be issued in accordance with and conform
6 to the requirements of sections 22 and 25 of the Office
7 of Federal Procurement Policy Act (41 U.S.C. 418b
8 and 421);

9 “(2) promote and implement the Congressional
10 policies in subsection (a) of this section and section
11 2 of the Office of Federal Procurement Policy Act (41
12 U.S.C. 401);

13 “(3) be implemented to support the requirements
14 of such agencies in time of war or national emergency
15 as well as in peacetime;

16 “(4) promote responsiveness of the procurement
17 system to agency needs by—

18 “(A) simplifying and streamlining procure-
19 ment processes; and

20 “(B) providing incentives to encourage con-
21 tractors to take actions and make recommenda-
22 tions that would reduce the costs of property or
23 services to be acquired;

24 “(5) facilitate the acquisition of commercial
25 items and commercial components at or based on

1 *commercial market prices, without requiring contrac-*
2 *tors to change their business practices; and*

3 “(6) *promote the acquisition and use of commer-*
4 *cial items, commercial components, and*
5 *nondevelopmental items by requiring descriptions of*
6 *agency requirements, whenever practicable, in terms*
7 *of functions to be performed or performance required.*

8 “(c) *Further, it is the policy of Congress that 20 per-*
9 *cent of the purchases and contracts entered into under this*
10 *chapter should be placed with small business concerns and*
11 *that 5 percent of the purchases and contracts entered into*
12 *under this chapter should be placed with concerns that are*
13 *small disadvantaged businesses.*

14 “(d) *It is also the policy of Congress that qualified*
15 *nonprofit agencies for the blind or severely handicapped (as*
16 *defined in section 2410d(b) of this title) shall be afforded*
17 *the maximum practicable opportunity to provide approved*
18 *commodities and services (as defined in such section) as*
19 *subcontractors and suppliers under contracts awarded by*
20 *the Department of Defense.”.*

21 **SEC. 1502. DEFINITIONS.**

22 *Section 2302 of title 10, United States Code, is amend-*
23 *ed—*

24 *(1) by striking out paragraphs (3) and (7);*

1 (2) by redesignating paragraph (6) as para-
2 graph (12);

3 (3) by redesignating paragraphs (2), (4), and (5)
4 as paragraphs (5), (8), and (9), respectively;

5 (4) by inserting after paragraph (1) the follow-
6 ing new paragraphs:

7 “(2) The term ‘procurement’ includes all stages
8 of the process of acquiring property or services, begin-
9 ning with the process for determining a need for
10 property or services and ending with contract comple-
11 tion and closeout.

12 “(3) The term ‘procurement system’ means the
13 integration of the procurement process, the profes-
14 sional development of procurement personnel, and the
15 management structure for carrying out the procure-
16 ment function.

17 “(4) The term ‘standards’ means the criteria for
18 determining the effectiveness of the procurement sys-
19 tem by measuring the performance of the various ele-
20 ments of such system.”;

21 (5) by inserting after paragraph (5) (as so redes-
22 ignated) the following new paragraphs:

23 “(6) The term ‘full and open competition’, when
24 used with respect to a procurement, means that all re-

1 *sponsible sources are permitted to submit sealed bids*
2 *or competitive proposals on the procurement.*

3 *“(7) The term ‘responsible source’ means a pro-*
4 *spective contractor who—*

5 *“(A) has adequate financial resources to per-*
6 *form the contract or the ability to obtain such*
7 *resources;*

8 *“(B) is able to comply with the required or*
9 *proposed delivery or performance schedule, tak-*
10 *ing into consideration all existing commercial*
11 *and Government business commitments;*

12 *“(C) has a satisfactory performance record;*

13 *“(D) has a satisfactory record of integrity and*
14 *business ethics;*

15 *“(E) has the necessary organization, experi-*
16 *ence, accounting and operational controls, and*
17 *technical skills, or the ability to obtain such or-*
18 *ganization, experience, controls, and skills;*

19 *“(F) has the necessary production, construc-*
20 *tion, and technical equipment and facilities, or*
21 *the ability to obtain such equipment and facili-*
22 *ties; and*

23 *“(G) is otherwise qualified and eligible, to re-*
24 *ceive an award under applicable laws and regu-*
25 *lations.”; and*

1 (6) by inserting after paragraph (9) (as so reded-
2 ignated) the following new paragraphs:

3 “(10) The term ‘item’, ‘item of supply’, or ‘sup-
4 plies’ means any individual part, component, sub-
5 assembly, assembly, or subsystem integral to a major
6 system, and other property which may be replaced
7 during the service life of the system, and includes
8 spare parts and replenishment spare parts, but does
9 not include packaging or labeling associated with
10 shipment or identification of an ‘item’.

11 “(11) The terms ‘commercial item’,
12 ‘nondevelopmental item’, ‘component’, and ‘commer-
13 cial component’ have the meanings given such terms
14 in section 2281 of this title.”.

15 **SEC. 1503. DELEGATION OF PROCUREMENT FUNCTIONS.**

16 (a) CONSOLIDATION OF DELEGATION AUTHORITY.—

17 (1) Section 2311 of title 10, United States Code, is amended
18 to read as follows:

19 **“§2311. Assignment and delegation of procurement**
20 **functions and responsibilities**

21 “(a) IN GENERAL.—Except to the extent expressly pro-
22 hibited by another provision of law, the head of an agency
23 may delegate, subject to his direction, to any other officer
24 or official of that agency, any power under this chapter.

1 “(b) *PROCUREMENTS FOR OR WITH OTHER AGEN-*
2 *CIES.—Subject to subsection (a), to facilitate the procure-*
3 *ment of property and services covered by this chapter by*
4 *each agency named in section 2303 of this title for any other*
5 *agency, and to facilitate joint procurement by those agen-*
6 *cies—*

7 “(1) *the head of an agency may, within his*
8 *agency, delegate functions and assign responsibilities*
9 *relating to procurement;*

10 “(2) *the heads of two or more agencies may by*
11 *agreement delegate procurement functions and assign*
12 *procurement responsibilities from one agency to an-*
13 *other of those agencies or to an officer or civilian em-*
14 *ployee of another of those agencies; and*

15 “(3) *the heads of two or more agencies may cre-*
16 *ate joint or combined offices to exercise procurement*
17 *functions and responsibilities.*

18 “(c) *APPROVAL OF TERMINATIONS AND REDUCTIONS*
19 *OF JOINT ACQUISITION PROGRAMS.—(1) The Secretary of*
20 *Defense shall prescribe regulations that prohibit each mili-*
21 *tary department participating in a joint acquisition pro-*
22 *gram approved by the Under Secretary of Defense for Ac-*
23 *quisition and Technology from terminating or substantially*
24 *reducing its participation in such program without the ap-*
25 *proval of the Under Secretary.*

1 “(2) *The regulations shall include the following provi-*
2 *sions:*

3 “(A) *A requirement that, before any such termi-*
4 *nation or substantial reduction in participation is*
5 *approved, the proposed termination or reduction be*
6 *reviewed by the Joint Requirements Oversight Council*
7 *of the Department of Defense.*

8 “(B) *A provision that authorizes the Under Sec-*
9 *retary of Defense for Acquisition and Technology to*
10 *require a military department whose participation in*
11 *a joint acquisition program has been approved for*
12 *termination or substantial reduction to continue to*
13 *provide some or all of the funding necessary for the*
14 *acquisition program to be continued in an efficient*
15 *manner.”.*

16 (2) *The table of sections at the beginning of chapter*
17 *137 of such title is amended by striking out the item relat-*
18 *ing to section 2311 and inserting in lieu thereof the follow-*
19 *ing:*

 “2311. Assignment and delegation of procurement functions and responsibil-
 ities.”.

20 (b) *CONFORMING REPEAL.—(1) Section 2308 of title*
21 *10, United States Code, is repealed.*

22 (2) *The table of sections at the beginning of chapter*
23 *137 of such title is amended by striking out the item related*
24 *to section 2308.*

1 **SEC. 1504. DETERMINATIONS AND DECISIONS.**

2 *Section 2310 of title 10, United States Code, is amend-*
 3 *ed to read as follows:*

4 **“§2310. Determinations and decisions**

5 *“(a) INDIVIDUAL OR CLASS DETERMINATIONS AND*
 6 *DECISIONS AUTHORIZED.—Determinations and decisions*
 7 *required to be made under this chapter by the head of an*
 8 *agency may be made for an individual purchase or contract*
 9 *or, except to the extent expressly prohibited by another pro-*
 10 *vision of law, for a class of purchases or contracts. Such*
 11 *determinations and decisions are final.*

12 *“(b) WRITTEN FINDINGS REQUIRED.—(1) Each deter-*
 13 *mination or decision under section 2306(g)(1), 2307(c), or*
 14 *2313(c) of this title shall be based on a written finding by*
 15 *the person making the determination or decision. The find-*
 16 *ing shall set out facts and circumstances that support the*
 17 *determination or decision.*

18 *“(2) Each finding referred to in paragraph (1) shall*
 19 *be final. The head of the agency making such finding shall*
 20 *maintain a copy of the finding for not less than 6 years*
 21 *after the date of the determination or decision.”.*

22 **SEC. 1505. RESTRICTIONS ON UNDEFINITIZED CONTRAC-**
 23 **TUAL ACTIONS**

24 *(a) CLARIFICATION OF LIMITATION.—Subsection (b) of*
 25 *section 2326 of title 10, United States Code, is amended—*

1 (1) in the subsection caption, by striking out
2 “AND EXPENDITURE”;

3 (2) in paragraph (1)(B), by striking out “or ex-
4 pended”;

5 (3) in paragraph (2), by striking out “expend”
6 and inserting in lieu thereof “obligate”; and

7 (4) in paragraph (3)—

8 (A) by striking out “expended” and insert-
9 ing in lieu thereof “obligated”; and

10 (B) by striking out “expend” and inserting
11 in lieu thereof “obligate”.

12 (b) *WAIVER AUTHORITY*.—Such subsection is further
13 amended—

14 (1) by redesignating paragraph (4) as para-
15 graph (5); and

16 (2) by inserting after paragraph (3) the follow-
17 ing new paragraph (4):

18 “(4) The head of an agency may waive the provisions
19 of this subsection with respect to a contract of that agency
20 if such head of an agency determines that the waiver is
21 necessary in order to support a contingency operation.”.

22 (c) *INAPPLICABILITY OF RESTRICTIONS TO CONTRACTS*
23 *WITHIN THE SIMPLIFIED ACQUISITION THRESHOLD*.—
24 Subsection (g)(1)(B) of such section is amended by striking

1 out “small purchase threshold” and inserting in lieu thereof
 2 “simplified acquisition threshold”.

3 **SEC. 1506. REPEAL OF REQUIREMENT RELATING TO PRO-**
 4 **DUCTION SPECIAL TOOLING AND PRODUC-**
 5 **TION SPECIAL TEST EQUIPMENT.**

6 (a) *REPEAL*.—Section 2329 of title 10, United States
 7 Code, is repealed.

8 (b) *CLERICAL AMENDMENT*.—The table of sections at
 9 the beginning of chapter 137 of such title is amended by
 10 striking out the item related to section 2329.

11 **SEC. 1507. REGULATIONS FOR BIDS.**

12 Section 2381(a) of title 10, United States Code, is
 13 amended by striking out “(a) The Secretary” and all that
 14 follows through the end of paragraph (1) and inserting in
 15 lieu thereof the following:

16 “(a) The Secretary of Defense or the Secretary of a
 17 military department may—

18 “(1) prescribe regulations for the preparation,
 19 submission, and opening of bids for contracts; and”.

20 **PART II—CIVILIAN AGENCY ACQUISITIONS**

21 **SEC. 1551. DEFINITIONS.**

22 (a) *ADDITIONAL TERMS*.—Section 309 of the Federal
 23 Property and Administrative Services Act of 1949 (41
 24 U.S.C. 259) is amended by adding at the end the following
 25 new subsection:

1 “(d) The terms ‘commercial item’, ‘nondevelopmental
2 item’, ‘component’, and ‘commercial component’ have the
3 same meanings provided such terms in section 315 of this
4 title.”.

5 (b) *CONFORMING AMENDMENTS.*—Section 4 of the Of-
6 fice of Federal Procurement Policy Act (41 U.S.C. 403) is
7 amended—

8 (1) by striking out “Act—” and inserting in lieu
9 thereof “Act.”;

10 (2) by capitalizing the initial letter in the first
11 word of each paragraph;

12 (3) by striking out the semicolon at the end of
13 each of paragraphs (1), (2), (3), (5), (6), (7), (8), and
14 (9) and inserting in lieu thereof a period; and

15 (4) in paragraphs (4) and (10), by striking out
16 “; and” at the end and inserting in lieu thereof a pe-
17 riod.

18 **SEC. 1552. DELEGATION OF PROCUREMENT FUNCTIONS.**

19 Title III of the Federal Property and Administrative
20 Services Act of 1949 (41 U.S.C. 251 et seq.), as amended
21 by section 1301, is further amended by adding at the end
22 the following new section:

1 **“SEC. 312. ASSIGNMENT AND DELEGATION OF PROCURE-**
2 **MENT FUNCTIONS AND RESPONSIBILITIES.**

3 *“(a) IN GENERAL.—Except to the extent expressly pro-*
4 *hibited by another provision of law, an agency head may*
5 *delegate, subject to his direction, to any other officer or offi-*
6 *cial of that agency, any power under this title.*

7 *“(b) PROCUREMENTS FOR OR WITH OTHER AGEN-*
8 *CIES.—Subject to subsection (a), to facilitate the procure-*
9 *ment of property and services covered by this title by each*
10 *executive agency for any other executive agency, and to fa-*
11 *cilitate joint procurement by those executive agencies—*

12 *“(1) an agency head may, within his executive*
13 *agency, delegate functions and assign responsibilities*
14 *relating to procurement;*

15 *“(2) the heads of two or more executive agencies*
16 *may by agreement delegate procurement functions*
17 *and assign procurement responsibilities from one ex-*
18 *ecutive agency to another of those executive agencies*
19 *or to an officer or civilian employee of another of*
20 *those executive agencies; and*

21 *“(3) the heads of two or more executive agencies*
22 *may create joint or combined offices to exercise pro-*
23 *curement functions and responsibilities.”.*

24 **SEC. 1553. DETERMINATIONS AND DECISIONS.**

25 *Title III of the Federal Property and Administrative*
26 *Services Act of 1949 (41 U.S.C. 251 et seq.), as amended*

1 *by section 1552, is further amended by adding at the end*
2 *the following new section:*

3 ***“SEC. 313. DETERMINATIONS AND DECISIONS.***

4 *“(a) INDIVIDUAL OR CLASS DETERMINATIONS AND*
5 *DECISIONS AUTHORIZED.—Determinations and decisions*
6 *required to be made under this title by an agency head may*
7 *be made for an individual purchase or contract or, except*
8 *to the extent expressly prohibited by another provision of*
9 *law, for a class of purchases or contracts. Such determina-*
10 *tions and decisions are final.*

11 *“(b) WRITTEN FINDINGS REQUIRED.—(1) Each deter-*
12 *mination under section 305(c) shall be based on a written*
13 *finding by the person making the determination or decision.*
14 *The finding shall set out facts and circumstances that sup-*
15 *port the determination or decision.*

16 *“(2) Each finding referred to in paragraph (1) shall*
17 *be final. The agency head making such finding shall main-*
18 *tain a copy of the finding for not less 6 years after the*
19 *date of the determination or decision.”.*

20 ***SEC. 1554. RESTRICTIONS ON UNDEFINITIZED CONTRAC-***
21 ***TUAL ACTIONS.***

22 *Title III of the Federal Property and Administrative*
23 *Services Act of 1949 (41 U.S.C. 251 et seq.), as amended*
24 *by section 1553, is further amended by adding at the end*
25 *the following new section:*

1 ***“SEC. 314. UNDEFINITIZED CONTRACTUAL ACTIONS: RE-***
2 ***STRICTIONS.***

3 “(a) *IN GENERAL.*—An agency head may not enter
4 into an undefinitized contractual action unless the request
5 to the agency head for authorization of the contractual ac-
6 tion includes a description of the anticipated effect on re-
7 quirements of the executive agency concerned if a delay is
8 incurred for purposes of determining contractual terms,
9 specifications, and price before performance is begun under
10 the contractual action.

11 “(b) *LIMITATIONS ON OBLIGATIONS OF FUNDS.*—(1)
12 A contracting officer of an executive agency may not enter
13 into an undefinitized contractual action unless the contrac-
14 tual action provides for agreement upon contractual terms,
15 specifications, and price by the earlier of—

16 “(A) the end of the 180-day period beginning on
17 the date on which the contractor submits a qualifying
18 proposal (as defined in subsection (f)) to definitize the
19 contractual terms, specifications, and price; or

20 “(B) the date on which the amount of funds obli-
21 gated under the contractual action is equal to more
22 than 50 percent of the negotiated overall ceiling price
23 for the contractual action.

24 “(2) Except as provided in paragraph (3), the con-
25 tracting officer for an undefinitized contractual action may
26 not obligate with respect to such contractual action an

1 amount that is equal to more than 50 percent of the nego-
2 tiated overall ceiling price until the contractual terms, spec-
3 ifications, and price are definitized for such contractual ac-
4 tion.

5 “(3) If a contractor submits a qualifying proposal (as
6 defined in subsection (f)) to definitize an undefinitized con-
7 tractual action before an amount equal to more than 50
8 percent of the negotiated overall ceiling price is obligated
9 on such action, the contracting officer for such action may
10 not obligate with respect to such contractual action an
11 amount that is equal to more than 75 percent of the nego-
12 tiated overall ceiling price until the contractual terms, spec-
13 ifications, and price are definitized for such contractual ac-
14 tion.

15 “(4) This subsection does not apply to an undefinitized
16 contractual action for the purchase of initial spares.

17 “(c) INCLUSION OF NON-URGENT REQUIREMENTS.—
18 Requirements for spare parts and support equipment that
19 are not needed on an urgent basis may not be included in
20 an undefinitized contractual action for spare parts and
21 support equipment that are needed on an urgent basis un-
22 less the agency head approves such inclusion as being—

23 “(1) good business practice; and

24 “(2) in the best interests of the United States.

1 “(d) *MODIFICATION OF SCOPE.*—The scope of an
 2 *undefinitized contractual action under which performance*
 3 *has begun may not be modified unless the agency head ap-*
 4 *proves such modification as being—*

5 “(1) *good business practice; and*

6 “(2) *in the best interests of the United States.*

7 “(e) *ALLOWABLE PROFIT.*—An agency head shall en-
 8 *sure that the profit allowed on an undefinitized contractual*
 9 *action for which the final price is negotiated after a sub-*
 10 *stantial portion of the performance required is completed*
 11 *reflects—*

12 “(1) *the possible reduced cost risk of the contrac-*
 13 *tor with respect to costs incurred during performance*
 14 *of the contract before the final price is negotiated; and*

15 “(2) *the reduced cost risk of the contractor with*
 16 *respect to costs incurred during performance of the re-*
 17 *maining portion of the contract.*

18 “(f) *DEFINITIONS.*—In this section:

19 “(1) *The term ‘undefinitized contractual action’*
 20 *means a new procurement action entered into by an*
 21 *agency head for which the contractual terms, speci-*
 22 *fications, or price are not agreed upon before perform-*
 23 *ance is begun under the action. Such term does not*
 24 *include contractual actions with respect to the follow-*
 25 *ing:*

1 “(A) Purchases in an amount not in excess
2 of the amount of the simplified acquisition
3 threshold.

4 “(B) Congressionally mandated long-lead
5 procurement contracts.

6 “(2) The term ‘qualifying proposal’ means a pro-
7 posal that contains sufficient information to enable
8 the agency head concerned to conduct complete and
9 meaningful audits of the information contained in the
10 proposal and of any other information that the agen-
11 cy head is entitled to review in connection with the
12 contract, as determined by the contracting officer.”.

13 **TITLE II—CONTRACT** 14 **ADMINISTRATION**

15 **Subtitle A—Contract Payment**

16 **PART I—ARMED SERVICES ACQUISITIONS**

17 **SEC. 2001. CONTRACT FINANCING.**

18 (a) REORGANIZATION OF PRINCIPAL AUTHORITY PRO-
19 VISION.—Section 2307 of title 10, United States Code, is
20 amended—

21 (1) by striking out the section heading and in-
22 serting in lieu thereof the following:

23 **“§ 2307. Contract financing”;**

24 (2) by inserting “PAYMENT AUTHORITY.—” after
25 “(a)” in subsection (a);

1 (3) by inserting “*PAYMENT AMOUNT.—*” after
2 “(b)” in subsection (b);

3 (4) by inserting “*SECURITY FOR ADVANCE PAY-*
4 *MENTS.—*” after “(c)” in subsection (c);

5 (5) by inserting “*CONDITIONS FOR PROGRESS*
6 *PAYMENTS.—*” after “(d)” in subsection (d)”; and

7 (6) by striking out “(e)(1) In any case” and in-
8 serting in lieu thereof “(g) *ACTION IN CASE OF*
9 *FRAUD.—(1) In any case*”.

10 (b) *TERMINOLOGY CORRECTION.—*Such section is fur-
11 ther amended in subsection (a)(2) by striking out “bid”.

12 (c) *EFFECTIVE DATE OF LIEN RELATED TO ADVANCE*
13 *PAYMENTS.—*Such section is further amended in subsection
14 (c) by inserting before the period at the end of the third
15 sentence the following: “and is effective immediately upon
16 the first advancement of funds without filing, notice, or any
17 other action by the United States”.

18 (d) *CONDITIONS FOR PROGRESS PAYMENTS.—*Such
19 section is further amended in subsection (d)—

20 (1) in the first sentence of paragraph (1), by
21 striking out “work, which” and all that follows
22 through “accomplished” and inserting in lieu thereof
23 “work accomplished that meets standards established
24 under the contract”; and

1 (2) by striking out paragraph (3) and inserting
2 in lieu thereof the following:

3 “(3) This subsection applies to a contract for an
4 amount equal to or greater than the simplified acquisition
5 threshold.”.

6 (e) CONDITIONS FOR PAYMENTS FOR COMMERCIAL
7 ITEMS.—Such section is further amended by inserting after
8 subsection (d) the following new subsection (e):

9 “(e) CONDITIONS FOR PAYMENTS FOR COMMERCIAL
10 ITEMS.—(1) Payments under subsection (a) for commercial
11 items, as that term is defined in section 2281 of this title,
12 may be made under such terms and conditions as the head
13 of the agency determines are appropriate or customary in
14 the commercial marketplace. The head of the agency shall
15 obtain adequate security for such payments. If the security
16 is in the form of a lien in favor of the United States, such
17 lien is paramount to all other liens and is effective imme-
18 diately upon the first payment, without filing, notice, or
19 other action by the United States.

20 “(2) Advance payments made under subsection (a) for
21 commercial items may include payments, in a total amount
22 of not more than 15 percent of the contract price, in ad-
23 vance of any performance of work under the contract.

1 “(3) *The conditions of subsections (c) and (d) do not*
2 *apply to payments made for commercial items in accord-*
3 *ance with this subsection.*”.

4 (f) *NAVY CONTRACTS.*—*Such section is further amend-*
5 *ed by inserting after subsection (e) the following new sub-*
6 *section (f):*

7 “(f) *CERTAIN NAVY CONTRACTS.*—(1) *The Secretary of*
8 *the Navy shall provide that the rate for progress payments*
9 *on any contract awarded by the Secretary for repair, main-*
10 *tenance, or overhaul of a naval vessel shall be not less*
11 *than—*

12 “(A) *95 percent, in the case of firms considered*
13 *to be small businesses; and*

14 “(B) *90 percent, in the case of all other firms.*

15 “(2) *The Secretary of the Navy may advance to private*
16 *salvage companies such funds as the Secretary considers*
17 *necessary to provide for the immediate financing of salvage*
18 *operations. Advances under this paragraph shall be made*
19 *on terms that the Secretary considers adequate for the pro-*
20 *tection of the United States.*

21 “(3) *The Secretary of the Navy shall ensure that, when*
22 *partial, progress, or other payments are made under a con-*
23 *tract for construction or conversion of a naval vessel, the*
24 *United States is secured by a lien upon work in progress*
25 *and on property acquired for performance of the contract*

1 *on account of all payments so made. The lien is paramount*
 2 *to all other liens.”.*

3 (g) *CLERICAL AMENDMENT.—The table of sections at*
 4 *the beginning of chapter 137 of title 10, United States Code,*
 5 *is amended by striking out the item relating to section 2307*
 6 *and inserting in lieu thereof the following:*

“2307. Contract financing.”.

7 (h) *REPEAL OF SUPERSEDED PROVISIONS.—*

8 (1) *PROGRESS PAYMENTS UNDER CERTAIN NAVY*
 9 *CONTRACTS.—*

10 (A) *REPEAL.—Section 7312 of title 10,*
 11 *United States Code, is repealed.*

12 (B) *CLERICAL AMENDMENT.—The table of*
 13 *sections at the beginning of chapter 633 of such*
 14 *title is amended by striking out the item relating*
 15 *to section 7312.*

16 (2) *ADVANCEMENT OF PAYMENTS FOR NAVY SAL-*
 17 *VAGE OPERATIONS.—*

18 (A) *REPEAL.—Section 7364 of such title is*
 19 *repealed.*

20 (B) *CLERICAL AMENDMENT.—The table of*
 21 *sections at the beginning of chapter 637 of such*
 22 *title is amended by striking out the item relating*
 23 *to section 7364.*

24 (3) *PARTIAL PAYMENTS UNDER NAVY CON-*
 25 *TRACTS—*

1 (A) *REPEAL*.—Section 7521 of such title is
2 repealed.

3 (B) *CLERICAL AMENDMENT*.—The table of
4 sections at the beginning of chapter 645 of such
5 title is amended by striking out the item relating
6 to section 7521.

7 (4) *NAVY RESEARCH CONTRACTS*.—Section 7522
8 of title 10, United States Code, is amended—

9 (A) by striking out subsection (b); and

10 (B) by redesignating subsection (c) as sub-
11 section (b).

12 **SEC. 2002. REPEAL OF VOUCHERING PROCEDURES SEC-**
13 **TION.**

14 (a) *REPEAL*.—Section 2355 of title 10, United States
15 Code, is repealed.

16 (b) *CLERICAL AMENDMENT*.—The table of sections at
17 the beginning of chapter 139 of such title is amended by
18 striking out the item relating to section 2355.

19 **PART II—CIVILIAN AGENCY ACQUISITIONS**

20 **SEC. 2051. CONTRACT FINANCING.**

21 (a) *REORGANIZATION OF PRINCIPAL AUTHORITY PRO-*
22 *VISION*.—Section 305 of the Federal Property and Adminis-
23 trative Services Act of 1949 (41 U.S.C. 255) is amended—

1 (1) *by striking out the section heading and the*
2 *section designation and inserting in lieu thereof the*
3 *following:*

4 ***“SEC. 305. CONTRACT FINANCING.”;***

5 (2) *by inserting “PAYMENT AUTHORITY.—” after*
6 *“(a)” in subsection (a);*

7 (3) *by inserting “PAYMENT AMOUNT.—” after*
8 *“(b)” in subsection (b); and*

9 (4) *by inserting “SECURITY FOR ADVANCE PAY-*
10 *MENTS.—” after “(c)” in subsection (c).*

11 (b) *TERMINOLOGY CORRECTION.—Such section is fur-*
12 *ther amended in subsection (a)(2) by striking out “bid”.*

13 (c) *EFFECTIVE DATE OF LIEN RELATED TO ADVANCE*
14 *PAYMENTS.—Such section is further amended in subsection*
15 *(c) by inserting before the period at the end of the third*
16 *sentence the following: “and is effective immediately upon*
17 *the first advancement of funds without filing, notice, or any*
18 *other action by the United States”.*

19 (d) *REVISION OF CIVILIAN AGENCY PROVISION TO EN-*
20 *SURE UNIFORM REQUIREMENTS FOR PROGRESS PAY-*
21 *MENTS.—*

22 (1) *IN GENERAL.—Such section is further*
23 *amended by adding at the end the following new sub-*
24 *sections:*

1 “(d) *CONDITIONS FOR PROGRESS PAYMENTS.*—(1) *The*
2 *agency head shall ensure that any payment for work in*
3 *progress (including materials, labor, and other items) under*
4 *a contract of an executive agency that provides for such*
5 *payments is commensurate with the work accomplished that*
6 *meets standards established under the contract. The contrac-*
7 *tor shall provide such information and evidence as the agen-*
8 *cy head determines necessary to permit the agency head to*
9 *carry out the preceding sentence.*

10 “(2) *The agency head shall ensure that progress pay-*
11 *ments referred to in paragraph (1) are not made for more*
12 *than 80 percent of the work accomplished under the contract*
13 *so long as the agency head has not made the contractual*
14 *terms, specifications, and price definite.*

15 “(3) *This subsection applies to a contract for an*
16 *amount equal to or greater than the simplified acquisition*
17 *threshold.*

18 “(e) *CONDITIONS FOR PAYMENTS FOR COMMERCIAL*
19 *ITEMS.*—(1) *Payments under subsection (a) for commercial*
20 *items, as that term is defined in section 315 of this title,*
21 *may be made under such terms and conditions as the head*
22 *of the agency determines are appropriate or customary in*
23 *the commercial marketplace. The head of the agency shall*
24 *obtain adequate security for such payments. If the security*
25 *is in the form of a lien in favor of the United States, such*

1 *lien is paramount to all other liens and is effective imme-*
2 *diately upon the first payment, without filing, notice, or*
3 *other action by the United States.*

4 “(2) Advance payments made under subsection (a) for
5 commercial items may include payments, in a total amount
6 of not more than 15 percent of the contract price, in ad-
7 vance of any performance of work under the contract.

8 “(3) The conditions of subsections (c) and (d) do not
9 apply to payments made for commercial items in accord-
10 ance with this subsection.

11 “(f) ACTION IN CASE OF FRAUD.—(1) In any case in
12 which the remedy coordination official of an executive agen-
13 cy finds that there is substantial evidence that the request
14 of a contractor for advance, partial, or progress payment
15 under a contract awarded by that executive agency is based
16 on fraud, the remedy coordination official shall recommend
17 that the agency head reduce or suspend further payments
18 to such contractor.

19 “(2) An agency head receiving a recommendation
20 under paragraph (1) in the case of a contractor’s request
21 for payment under a contract shall determine whether there
22 is substantial evidence that the request is based on fraud.
23 Upon making such a determination, the agency head may
24 reduce or suspend further payments to the contractor under
25 such contract.

1 “(3) The extent of any reduction or suspension of pay-
2 ments by an agency head under paragraph (2) on the basis
3 of fraud shall be reasonably commensurate with the antici-
4 pated loss to the United States resulting from the fraud.

5 “(4) A written justification for each decision of the
6 agency head whether to reduce or suspend payments under
7 paragraph (2), and for each recommendation received by
8 the agency head in connection with such decision, shall be
9 prepared and be retained in the files of the executive agency.

10 “(5) Each agency head shall prescribe procedures to
11 ensure that, before the agency head decides to reduce or sus-
12 pend payments in the case of a contractor under paragraph
13 (2), the contractor is afforded notice of the proposed reduc-
14 tion or suspension and an opportunity to submit matters
15 to the head of the agency in response to such proposed reduc-
16 tion or suspension.

17 “(6) Not later than 180 days after the date on which
18 an agency head reduces or suspends payments to a contrac-
19 tor under paragraph (2), the remedy coordination official
20 of the executive agency shall—

21 “(A) review the determination of fraud on which
22 the reduction or suspension is based; and

23 “(B) transmit a recommendation to the agency
24 head whether the suspension or reduction should con-
25 tinue.

1 “(7) Each agency head who receives recommendations
2 made by a remedy coordination official of the executive
3 agency to reduce or suspend payments under paragraph (2)
4 during a fiscal year shall prepare for such year a report
5 that contains the recommendations, the actions taken on the
6 recommendations and the reasons for such actions, and an
7 assessment of the effects of such actions on the Federal Gov-
8 ernment. Any such report shall be available to any Member
9 of Congress upon request.

10 “(8) An agency head may not delegate responsibilities
11 under this subsection to any person in a position below level
12 IV of the Executive Schedule.

13 “(9) In this subsection, the term ‘remedy coordination
14 official’, with respect to an executive agency, means the per-
15 son or entity in that executive agency who coordinates with-
16 in that executive agency the administration of criminal,
17 civil, administrative, and contractual remedies resulting
18 from investigations of fraud or corruption related to pro-
19 curement activities.”.

20 (2) RELATIONSHIP TO PROMPT PAYMENT RE-
21 QUIREMENTS.—The amendments made by paragraph
22 (1) are not intended to impair or modify procedures
23 required by the provisions of chapter 39 of title 31,
24 United States Code, and the regulations issued pursu-
25 ant to such provisions of law, that relate to progress

1 *payment requests, as such procedures are in effect on*
2 *the date of the enactment of this Act.*

3 ***PART III—ACQUISITIONS GENERALLY***

4 ***SEC. 2061. INTEREST PENALTY ON CONTRACT CLOSE-OUT***

5 ***LAG-TIME.***

6 *Section 3903(a)(1) of title 31, United States Code, is*
7 *amended—*

8 (1) *by striking out “or” at the end of subpara-*
9 *graph (A);*

10 (2) *by inserting “or” after the semicolon at the*
11 *end of subparagraph (B); and*

12 (3) *by adding at the end the following new sub-*
13 *paragraph:*

14 *“(C) in any case in which the Government*
15 *delays making final payment under the contract*
16 *for more than one year after the date on which*
17 *the last item of property is delivered or final*
18 *performance of the services is completed under*
19 *the contract, the date on which such last delivery*
20 *is made or service completed;”.*

1 ***Subtitle B—Cost Principles***

2 ***PART I—ARMED SERVICES ACQUISITIONS***

3 ***SEC. 2101. ALLOWABLE CONTRACT COSTS.***

4 (a) *COMPTROLLER GENERAL EVALUATION.*—Sub-
5 *section (l) of section 2324 of title 10, United States Code,*
6 *is amended to read as follows:*

7 “(l) *The Comptroller General shall periodically evalu-*
8 *ate the implementation of this section by the Secretary of*
9 *Defense. Such evaluation shall consider the extent to*
10 *which—*

11 “(1) *the implementation is consistent with con-*
12 *gressional intent;*

13 “(2) *the implementation achieves the objective of*
14 *eliminating unallowable costs charged to covered con-*
15 *tracts; and*

16 “(3) *the implementation (as well as the provi-*
17 *sions of this section and the regulations prescribed*
18 *under this section) could be improved or strength-*
19 *ened.’’.*

20 (b) *COVERED CONTRACT DEFINED.*—*Subsection (m) of*
21 *such section is amended to read as follows:*

22 “(m) *In this section, the term ‘covered contract’ means*
23 *a contract for an amount in excess of \$500,000 that is en-*
24 *tered into by the Department of Defense, except that such*
25 *term does not include a fixed-price contract without cost*

1 *incentives or any contract for the purchase of commercial*
 2 *items (as defined in section 2281 of this title).”.*

3 ***SEC. 2102. REPEAL OF CONTRACT PROFIT CONTROLS DUR-***
 4 ***ING EMERGENCY PERIODS.***

5 *(a) REPEAL.—Section 2382 of title 10, United States*
 6 *Code, is repealed.*

7 *(b) CLERICAL AMENDMENT.—The table of sections at*
 8 *the beginning of chapter 141 of such title is amended by*
 9 *striking out the item relating to section 2382.*

10 ***PART II—CIVILIAN AGENCY ACQUISITIONS***

11 ***SEC. 2151. ALLOWABLE CONTRACT COSTS.***

12 *Section 306 of the Federal Property and Administra-*
 13 *tive Services Act of 1949 (41 U.S.C. 256) is amended to*
 14 *read as follows:*

15 ***“SEC. 306. ALLOWABLE COSTS.***

16 *“(a) INDIRECT COST THAT VIOLATES A FAR COST*
 17 *PRINCIPLE.—The head of an executive agency shall require*
 18 *that a covered contract provide that if the contractor sub-*
 19 *mits to the executive agency a proposal for settlement of*
 20 *indirect costs incurred by the contractor for any period*
 21 *after such costs have been accrued and if that proposal in-*
 22 *cludes the submission of a cost which is unallowable because*
 23 *the cost violates a cost principle in the Federal Acquisition*
 24 *Regulation (referred to in section 25(c)(1) of the Office of*
 25 *Federal Procurement Policy Act (41 U.S.C. 421(c)(1)) or*

1 *an executive agency's supplement to the Federal Acquisition*
2 *Regulation, the cost shall be disallowed.*

3 *“(b) PENALTY FOR VIOLATION OF COST PRINCIPLE.—*

4 *(1) If the agency head determines that a cost submitted by*
5 *a contractor in its proposal for settlement is expressly unal-*
6 *lowable under a cost principle referred to in subsection (a)*
7 *that defines the allowability of specific selected costs, the*
8 *agency head shall assess a penalty against the contractor*
9 *in an amount equal to—*

10 *“(A) the amount of the disallowed cost allocated*
11 *to covered contracts for which a proposal for settle-*
12 *ment of indirect costs has been submitted; plus*

13 *“(B) interest (to be computed based on provi-*
14 *sions in the Federal Acquisition Regulation) to com-*
15 *pensate the United States for the use of any funds*
16 *which a contractor has been paid in excess of the*
17 *amount to which the contractor was entitled.*

18 *“(2) If the agency head determines that a proposal for*
19 *settlement of indirect costs submitted by a contractor in-*
20 *cludes a cost determined to be unallowable in the case of*
21 *such contractor before the submission of such proposal, the*
22 *agency head shall assess a penalty against the contractor*
23 *in an amount equal to two times the amount of the dis-*
24 *allowed cost allocated to covered contracts for which a pro-*
25 *posal for settlement of indirect costs has been submitted.*

1 “(c) *WAIVER OF PENALTY.—The Federal Acquisition*
2 *Regulation shall provide for a penalty under subsection (b)*
3 *to be waived in the case of a contractor’s proposal for settle-*
4 *ment of indirect costs when—*

5 “(1) *the contractor withdraws the proposal before*
6 *the formal initiation of an audit of the proposal by*
7 *the Federal Government and resubmits a revised pro-*
8 *posal;*

9 “(2) *the amount of unallowable costs subject to*
10 *the penalty is insignificant; or*

11 “(3) *the contractor demonstrates, to the contract-*
12 *ing officer’s satisfaction, that—*

13 “(A) *it has established appropriate policies*
14 *and personnel training and an internal control*
15 *and review system that provide assurances that*
16 *unallowable costs subject to penalties are pre-*
17 *cluded from being included in the contractor’s*
18 *proposal for settlement of indirect costs; and*

19 “(B) *the unallowable costs subject to the*
20 *penalty were inadvertently incorporated into the*
21 *proposal.*

22 “(d) *APPLICABILITY OF CONTRACT DISPUTES PROCE-*
23 *DURE TO DISALLOWANCE OF COST AND ASSESSMENT OF*
24 *PENALTY.—An action of an agency head under subsection*
25 *(a) or (b)—*

1 “(1) shall be considered a final decision for the
2 purposes of section 6 of the Contract Disputes Act of
3 1978 (41 U.S.C. 605); and

4 “(2) is appealable in the manner provided in
5 section 7 of such Act.

6 “(e) *SPECIFIC COSTS NOT ALLOWABLE.*—(1) The fol-
7 lowing costs are not allowable under a covered contract:

8 “(A) Costs of entertainment, including amuse-
9 ment, diversion, and social activities, and any costs
10 directly associated with such costs (such as tickets to
11 shows or sports events, meals, lodging, rentals, trans-
12 portation, and gratuities).

13 “(B) Costs incurred to influence (directly or in-
14 directly) legislative action on any matter pending be-
15 fore Congress or a State legislature.

16 “(C) Costs incurred in defense of any civil or
17 criminal fraud proceeding or similar proceeding (in-
18 cluding filing of any false certification) brought by
19 the United States where the contractor is found liable
20 or had pleaded *nolo contendere* to a charge of fraud
21 or similar proceeding (including filing of a false cer-
22 tification).

23 “(D) Payments of fines and penalties resulting
24 from violations of, or failure to comply with, Federal,
25 State, local, or foreign laws and regulations, except

1 *when incurred as a result of compliance with specific*
2 *terms and conditions of the contract or specific writ-*
3 *ten instructions from the contracting officer authoriz-*
4 *ing in advance such payments in accordance with ap-*
5 *plicable provisions of the Federal Acquisition Regula-*
6 *tion.*

7 “(E) *Costs of membership in any social, dining,*
8 *or country club or organization.*

9 “(F) *Costs of alcoholic beverages.*

10 “(G) *Contributions or donations, regardless of*
11 *the recipient.*

12 “(H) *Costs of advertising designed to promote*
13 *the contractor or its products.*

14 “(I) *Costs of promotional items and memora-*
15 *bilias, including models, gifts, and souvenirs.*

16 “(J) *Costs for travel by commercial aircraft*
17 *which exceed the amount of the standard commercial*
18 *fare.*

19 “(K) *Costs incurred in making any payment*
20 *(commonly known as a ‘golden parachute payment’)*
21 *which is—*

22 “(i) *in an amount in excess of the normal*
23 *severance pay paid by the contractor to an em-*
24 *ployee upon termination of employment; and*

1 “(ii) is paid to the employee contingent
2 upon, and following, a change in management
3 control over, or ownership of, the contractor or a
4 substantial portion of the contractor’s assets.

5 “(L) Costs of commercial insurance that protects
6 against the costs of the contractor for correction of the
7 contractor’s own defects in materials or workmanship.

8 “(M) Costs of severance pay paid by the contrac-
9 tor to foreign nationals employed by the contractor
10 under a service contract performed outside the United
11 States, to the extent that the amount of severance pay
12 paid in any case exceeds the amount paid in the in-
13 dustry involved under the customary or prevailing
14 practice for firms in that industry providing similar
15 services in the United States, as determined under the
16 Federal Acquisition Regulation.

17 “(N) Costs of severance pay paid by the contrac-
18 tor to a foreign national employed by the contractor
19 under a service contract performed in a foreign coun-
20 try if the termination of the employment of the for-
21 eign national is the result of the closing of, or the cur-
22 tailment of activities at, a United States facility in
23 that country at the request of the government of that
24 country.

1 “(O) Costs incurred by a contractor in connec-
2 tion with any criminal, civil, or administrative pro-
3 ceeding commenced by the United States or a State,
4 to the extent provided in subsection (k).

5 “(2)(A) Pursuant to the Federal Acquisition Regula-
6 tion and subject to the availability of appropriations, the
7 agency head, in awarding a covered contract, may waive
8 the application of the provisions of paragraphs (1)(M) and
9 (1)(N) to that contract if the agency head determines that—

10 “(i) the application of such provisions to the
11 contract would adversely affect the continuation of a
12 program, project, or activity that provides significant
13 support services for employees of the executive agency
14 posted outside the United States;

15 “(ii) the contractor has taken (or has established
16 plans to take) appropriate actions within the contrac-
17 tor’s control to minimize the amount and number of
18 incidents of the payment of severance pay by the con-
19 tractor to employees under the contract who are for-
20 eign nationals; and

21 “(iii) the payment of severance pay is necessary
22 in order to comply with a law that is generally appli-
23 cable to a significant number of businesses in the
24 country in which the foreign national receiving the
25 payment performed services under the contract or is

1 *necessary to comply with a collective bargaining*
2 *agreement.*

3 “(B) *The head of the executive agency concerned shall*
4 *include in the solicitation for a covered contract a statement*
5 *indicating—*

6 “(i) *that a waiver has been granted under sub-*
7 *paragraph (A) for the contract; or*

8 “(ii) *whether the agency head will consider*
9 *granting such a waiver, and, if the agency head will*
10 *consider granting a waiver, the criteria to be used in*
11 *granting the waiver.*

12 “(C) *The agency head shall make the final determina-*
13 *tion regarding whether to grant a waiver under subpara-*
14 *graph (A) with respect to a covered contract before award*
15 *of the contract.*

16 “(3) *The provisions of the Federal Acquisition Regula-*
17 *tion implementing this section may establish appropriate*
18 *definitions, exclusions, limitations, and qualifications.*

19 “(f) *REQUIRED REGULATIONS.—(1) The Federal Ac-*
20 *quisition Regulation shall contain provisions on the allow-*
21 *ability of contractor costs. Such provisions shall define in*
22 *detail and in specific terms those costs which are unallow-*
23 *able, in whole or in part, under covered contracts. The regu-*
24 *lations shall, at a minimum, clarify the cost principles ap-*
25 *plicable to contractor costs of the following:*

1 “(A) Air shows.

2 “(B) Membership in civic, community, and pro-
3 fessional organizations.

4 “(C) Recruitment.

5 “(D) Employee morale and welfare.

6 “(E) Actions to influence (directly or indirectly)
7 executive branch action on regulatory and contract
8 matters (other than costs incurred in regard to con-
9 tract proposals pursuant to solicited or unsolicited
10 bids).

11 “(F) Community relations.

12 “(G) Dining facilities.

13 “(H) Professional and consulting services, in-
14 cluding legal services.

15 “(I) Compensation.

16 “(J) Selling and marketing.

17 “(K) Travel.

18 “(L) Public relations.

19 “(M) Hotel and meal expenses.

20 “(N) Expense of corporate aircraft.

21 “(O) Company-furnished automobiles.

22 “(P) Advertising.

23 “(2) The Federal Acquisition Regulation shall require
24 that a contracting officer not resolve any questioned costs
25 until the contracting officer has obtained—

1 “(A) adequate documentation with respect to
2 such costs; and

3 “(B) the opinion of the executive agency’s con-
4 tract auditor on the allowability of such costs.

5 “(3) The Federal Acquisition Regulation shall provide
6 that, to the maximum extent practicable, an executive agen-
7 cy’s contract auditor be present at any negotiation or meet-
8 ing with the contractor regarding a determination of the
9 allowability of indirect costs of the contractor.

10 “(4) The Federal Acquisition Regulation shall require
11 that all categories of costs designated in the report of an
12 executive agency’s contract auditor as questioned with re-
13 spect to a proposal for settlement be resolved in such a man-
14 ner that the amount of the individual questioned costs that
15 are paid will be reflected in the settlement.

16 “(g) *APPLICABILITY OF REGULATIONS TO SUB-*
17 *CONTRACTORS.*—The regulations referred to in subsections
18 (e) and (f)(1) shall require, to the maximum extent prac-
19 ticable, that such regulations apply to all subcontractors of
20 a covered contract.

21 “(h) *CONTRACTOR CERTIFICATION REQUIRED.*—(1) A
22 proposal for settlement of indirect costs applicable to a cov-
23 ered contract shall include a certification by an official of
24 the contractor that, to the best of the certifying official’s
25 knowledge and belief, all indirect costs included in the pro-

1 *posal are allowable. Any such certification shall be in a*
 2 *form prescribed in the Federal Acquisition Regulation.*

3 “(2) *The agency head concerned may, in an excep-*
 4 *tional case, waive the requirement for certification under*
 5 *paragraph (1) in the case of any contract if the agency*
 6 *head—*

7 “(A) *determines in such case that it would be in*
 8 *the interest of the United States to waive such certifi-*
 9 *cation; and*

10 “(B) *states in writing the reasons for that deter-*
 11 *mination and makes such determination available to*
 12 *the public.*

13 “(i) *PENALTIES FOR SUBMISSION OF COST KNOWN AS*
 14 *NOT ALLOWABLE.—The submission to an executive agency*
 15 *of a proposal for settlement of costs for any period after*
 16 *such costs have been accrued that includes a cost that is*
 17 *expressly specified by statute or regulation as being unal-*
 18 *lowable, with the knowledge that such cost is unallowable,*
 19 *shall be subject to the provisions of section 287 of title 18,*
 20 *United States Code, and section 3729 of title 31, United*
 21 *States Code.*

22 “(j) *CONTRACTOR TO HAVE BURDEN OF PROOF.—In*
 23 *a proceeding before a board of contract appeals, the United*
 24 *States Court of Federal Claims, or any other Federal court*
 25 *in which the reasonableness of indirect costs for which a*

1 *contractor seeks reimbursement from the United States is*
2 *in issue, the burden of proof shall be upon the contractor*
3 *to establish that those costs are reasonable.*

4 “(k) *PROCEEDING COSTS NOT ALLOWABLE.*—(1) *Ex-*
5 *cept as otherwise provided in this subsection, costs incurred*
6 *by a contractor in connection with any criminal, civil, or*
7 *administrative proceeding commenced by the United States*
8 *or a State are not allowable as reimbursable costs under*
9 *a covered contract if the proceeding (A) relates to a viola-*
10 *tion of, or failure to comply with, a Federal or State statute*
11 *or regulation, and (B) results in a disposition described in*
12 *paragraph (2).*

13 “(2) *A disposition referred to in paragraph (1)(B) is*
14 *any of the following:*

15 “(A) *In the case of a criminal proceeding, a con-*
16 *viction (including a conviction pursuant to a plea of*
17 *nolo contendere) by reason of the violation or failure*
18 *referred to in paragraph (1).*

19 “(B) *In the case of a civil or administrative pro-*
20 *ceeding involving an allegation of fraud or similar*
21 *misconduct, a determination of contractor liability on*
22 *the basis of the violation or failure referred to in*
23 *paragraph (1).*

24 “(C) *In the case of any civil or administrative*
25 *proceeding, the imposition of a monetary penalty by*

1 *reason of the violation or failure referred to in para-*
2 *graph (1).*

3 “(D) A final decision—

4 “(i) to debar or suspend the contractor,

5 “(ii) to rescind or void the contract, or

6 “(iii) to terminate the contract for default,

7 *by reason of the violation or failure referred to in*
8 *paragraph (1).*

9 “(E) A disposition of the proceeding by consent
10 *or compromise if such action could have resulted in*
11 *a disposition described in subparagraph (A), (B), (C),*
12 *or (D).*

13 “(3) In the case of a proceeding referred to in para-
14 *graph (1) that is commenced by the United States and is*
15 *resolved by consent or compromise pursuant to an agree-*
16 *ment entered into by a contractor and the United States,*
17 *the costs incurred by the contractor in connection with such*
18 *proceeding that are otherwise not allowable as reimbursable*
19 *costs under such paragraph may be allowed to the extent*
20 *specifically provided in such agreement.*

21 “(4) In the case of a proceeding referred to in para-
22 *graph (1) that is commenced by a State, the agency head*
23 *that awarded the covered contract involved in the proceed-*
24 *ing may allow the costs incurred by the contractor in con-*
25 *nection with such proceeding as reimbursable costs if the*

1 *agency head determines, in accordance with the Federal Ac-*
2 *quisition Regulation, that the costs were incurred as a re-*
3 *sult of (A) a specific term or condition of the contract, or*
4 *(B) specific written instructions of the agency.*

5 “(5)(A) *Except as provided in subparagraph (C), costs*
6 *incurred by a contractor in connection with a criminal,*
7 *civil, or administrative proceeding commenced by the Unit-*
8 *ed States or a State in connection with a covered contract*
9 *may be allowed as reimbursable costs under the contract*
10 *if such costs are not disallowable under paragraph (1), but*
11 *only to the extent provided in subparagraph (B).*

12 “(B)(i) *The amount of the costs allowable under sub-*
13 *paragraph (A) in any case may not exceed the amount*
14 *equal to 80 percent of the amount of the costs incurred, to*
15 *the extent that such costs are determined to be otherwise*
16 *allowable and allocable under the Federal Acquisition Regu-*
17 *lation.*

18 “(ii) *Regulations issued for the purpose of clause (i)*
19 *shall provide for appropriate consideration of the complex-*
20 *ity of procurement litigation, generally accepted principles*
21 *governing the award of legal fees in civil actions involving*
22 *the United States as a party, and such other factors as may*
23 *be appropriate.*

24 “(C) *In the case of a proceeding referred to in subpara-*
25 *graph (A), contractor costs otherwise allowable as reimburs-*

1 *able costs under this paragraph are not allowable if (i) such*
2 *proceeding involves the same contractor misconduct alleged*
3 *as the basis of another criminal, civil, or administrative*
4 *proceeding, and (ii) the costs of such other proceeding are*
5 *not allowable under paragraph (1).*

6 *“(6) In this subsection:*

7 *“(A) The term ‘proceeding’ includes an inves-*
8 *tigation.*

9 *“(B) The term ‘costs’, with respect to a proceed-*
10 *ing—*

11 *“(i) means all costs incurred by a contrac-*
12 *tor, whether before or after the commencement of*
13 *any such proceeding; and*

14 *“(ii) includes—*

15 *“(I) administrative and clerical ex-*
16 *penses;*

17 *“(II) the cost of legal services, includ-*
18 *ing legal services performed by an employee*
19 *of the contractor;*

20 *“(III) the cost of the services of ac-*
21 *countants and consultants retained by the*
22 *contractor; and*

23 *“(IV) the pay of directors, officers, and*
24 *employees of the contractor for time devoted*

1 by such directors, officers, and employees to
2 such proceeding.

3 “(C) The term ‘penalty’ does not include restitu-
4 tion, reimbursement, or compensatory damages.

5 “(I) PERIODIC EVALUATION OF IMPLEMENTATION.—

6 (1) The Comptroller General shall periodically evaluate the
7 implementation of this section by the heads of executive
8 agencies. Such evaluation shall consider the extent to
9 which—

10 “(A) the implementation is consistent with con-
11 gressional intent;

12 “(B) the implementation achieves the objective of
13 eliminating unallowable costs charged to covered con-
14 tracts; and

15 “(C) the implementation (as well as the provi-
16 sions of this section and the regulations prescribed
17 under this section) could be improved or strengthened.

18 “(2) The Comptroller General shall submit to the Com-
19 mittees on Governmental Affairs and on Appropriations of
20 the Senate and the Committees on Government Operation
21 and on Appropriations of the House of Representatives a
22 report on such evaluation not later than 180 days after pub-
23 lication in the Federal Register of revisions to the Federal
24 Acquisition Regulation that make substantive changes in

1 *provisions of the Federal Acquisition Regulation pertaining*
 2 *to allowable costs under covered contracts.*

3 “(m) *COVERED CONTRACT DEFINED.*—In this section,
 4 the term ‘covered contract’ means a contract for an amount
 5 in excess of \$500,000 that is entered into by an executive
 6 agency, except that such term does not include a fixed-price
 7 contract without cost incentives or any contract for the pur-
 8 chase of commercial items (as defined in section 315 of this
 9 title).”.

10 **PART III—ACQUISITIONS GENERALLY**

11 **SEC. 2161. TRAVEL EXPENSES OF GOVERNMENT CONTRAC-** 12 **TORS.**

13 *Section 24(a) of the Office of Federal Procurement Pol-*
 14 *icy Act (41 U.S.C. 420) is amended by inserting after*
 15 *“Under any contract” the following: “requiring submission*
 16 *of cost or pricing data or the negotiation of final indirect*
 17 *costs”.*

18 **Subtitle C—Audit and Access to** 19 **Records**

20 **PART I—ARMED SERVICES ACQUISITIONS**

21 **SEC. 2201. CONSOLIDATION AND REVISION OF AUTHORITY** 22 **TO EXAMINE RECORDS OF CONTRACTORS.**

23 (a) *AUTHORITY.*—

24 (1) *IN GENERAL.*—Section 2313 of title 10, Unit-
 25 *ed States Code, is amended to read as follows:*

1 **“§ 2313. Examination of records of contractor**

2 “(a) AGENCY AUTHORITY.—The head of an agency,
3 acting through an authorized representative—

4 “(1) is entitled to inspect the plant and audit
5 the records of—

6 “(A) a contractor performing a cost-reim-
7 bursement, incentive, time-and-materials, labor-
8 hour, or price-redeterminable contract, or any
9 combination of such contracts, made by that
10 agency under this chapter; and

11 “(B) a subcontractor performing any sub-
12 contract under such a contract or combination of
13 contracts; and

14 “(2) shall, for the purpose of evaluating the accu-
15 racy, completeness, and currency of cost or pricing
16 data required to be submitted pursuant to section
17 2306a of this title with respect to a contract or sub-
18 contract, have the right to examine all records of the
19 contractor or subcontractor related to—

20 “(A) the proposal for the contract or sub-
21 contract;

22 “(B) the discussions conducted on the pro-
23 posal;

24 “(C) pricing of the contract or subcontract;
25 or

1 “(D) *performance of the contract or sub-*
2 *contract.*

3 “(b) *SUBPOENA POWER.—(1) The Director of the De-*
4 *fense Contract Audit Agency (or any successor agency) may*
5 *require by subpoena the production of any records of a con-*
6 *tractor that the Secretary of Defense is authorized to audit*
7 *or examine under subsection (a).*

8 “(2) *Any such subpoena, in the case of contumacy or*
9 *refusal to obey, shall be enforceable by order of an appro-*
10 *priate United States district court.*

11 “(3) *The authority provided by paragraph (1) may not*
12 *be redelegated.*

13 “(4) *The Director (or any successor official) shall sub-*
14 *mit an annual report to the Secretary of Defense on the*
15 *exercise of such authority during the preceding year and*
16 *the reasons why such authority was exercised in any in-*
17 *stance. The Secretary shall forward a copy of each such re-*
18 *port to the Committees on Armed Services of the Senate*
19 *and House of Representatives.*

20 “(c) *COMPTROLLER GENERAL AUTHORITY.—(1) Ex-*
21 *cept as provided in paragraph (2), each contract awarded*
22 *after using procedures other than sealed bid procedures shall*
23 *provide that the Comptroller General and his representa-*
24 *tives are entitled to examine any records of the contractor,*

1 *or any of its subcontractors, that directly pertain to, and*
2 *involve transactions relating to, the contract or subcontract.*

3 *“(2) Paragraph (1) does not apply to a contract or*
4 *subcontract with a foreign contractor or foreign subcontractor*
5 *if the head of the agency concerned determines, with the*
6 *concurrence of the Comptroller General or his designee, that*
7 *the application of that paragraph to the contract or sub-*
8 *contract would not be in the public interest. However, the*
9 *concurrence of the Comptroller General or his designee is*
10 *not required—*

11 *“(A) where the contractor or subcontractor is a*
12 *foreign government or agency thereof or is precluded*
13 *by the laws of the country involved from making its*
14 *records available for examination; and*

15 *“(B) where the head of the agency determines,*
16 *after taking into account the price and availability of*
17 *the property and services from United States sources,*
18 *that the public interest would be best served by not*
19 *applying paragraph (1).*

20 *“(d) AUTHORITY TO USE OTHER AGENCY AUDIT FOR*
21 *PRE-AWARD AUDIT.—In any case in which the head of an*
22 *agency proposes to examine the records of a contractor or*
23 *subcontractor related to a proposal for a contract or sub-*
24 *contract (as authorized by subsection (a)(2)(A)), the head*
25 *of the agency may use the results of an audit conducted*

1 *by a Federal Government audit agency within the previous*
2 *year if the contracting officer determines that the objectives*
3 *of the proposed pre-award audit reasonably can be met by*
4 *the other audit.*

5 “(e) *LIMITATION.—The right of the head of an agency*
6 *under subsection (a), and the right of the Comptroller Gen-*
7 *eral under subsection (c), with respect to a contract or sub-*
8 *contract shall expire three years after final payment under*
9 *such contract or subcontract.*

10 “(f) *INAPPLICABILITY TO CERTAIN CONTRACTS.—This*
11 *section does not apply to the following contracts:*

12 “(1) *Contracts for utility services at rates not ex-*
13 *ceeding those established to apply uniformly to the*
14 *public, plus any applicable reasonable connection*
15 *charge.*

16 “(g) *FORMS OF ORIGINAL RECORD STORAGE.—Noth-*
17 *ing in this section shall be construed to preclude a contrac-*
18 *tor from duplicating or storing original records in elec-*
19 *tronic form.*

20 “(h) *USE OF IMAGES OF ORIGINAL RECORDS.—The*
21 *head of an agency shall not require a contractor or sub-*
22 *contractor to provide original records in an audit carried*
23 *out pursuant to this section if the contractor or subcontrac-*
24 *tor provides photographic or electronic images of the origi-*
25 *nal records and meets the following requirements:*

1 “(1) The contractor or subcontractor has estab-
 2 lished procedures to ensure that the imaging process
 3 preserves the integrity, reliability, and security of the
 4 original records.

5 “(2) The contractor or subcontractor maintains
 6 an effective indexing system to permit timely and
 7 convenient access to the imaged records.

8 “(3) The contractor or subcontractor retains the
 9 original records for a minimum of one year after im-
 10 aging to permit periodic validation of the imaging
 11 systems.

12 “(i) *RECORDS DEFINED.*—In this section, the term
 13 ‘records’ includes books, documents, accounting procedures
 14 and practices, and other data, regardless of type and re-
 15 gardless of whether such items are in written form, in the
 16 form of computer data, or in any other form.”.

17 (2) *CLERICAL AMENDMENT.*—The item relating
 18 to such section in the table of sections at the begin-
 19 ning of chapter 137 of title 10, United States Code,
 20 is amended to read as follows:

“2313. Examination of records of contractor.”.

21 (b) *REPEAL OF SUPERSEDED PROVISION.*—

22 (1) *REPEAL.*—Section 2406 of title 10, United
 23 States Code, is repealed.

24 (2) *CLERICAL AMENDMENT.*—The table of sec-
 25 tions at the beginning of chapter 141 of such title is

1 *amended by striking out the item relating to section*
2 *2406.*

3 ***PART II—CIVILIAN AGENCY ACQUISITIONS***

4 ***SEC. 2251. AUTHORITY TO EXAMINE RECORDS OF CONTRAC-***
5 ***TORS.***

6 *(a) AUTHORITY.—Title III of the Federal Property*
7 *and Administrative Services Act of 1949 (41 U.S.C. 251*
8 *et seq.), as amended by section 1251(2), is further amended*
9 *by inserting after section 304B the following new section:*

10 ***“SEC. 304C. EXAMINATION OF RECORDS OF CONTRACTOR.***

11 *“(a) AGENCY AUTHORITY.—The head of an executive*
12 *agency, acting through an authorized representative—*

13 *“(1) is entitled to inspect the plant and audit*
14 *the records of—*

15 *“(A) a contractor performing a cost-reim-*
16 *bursment, incentive, time-and-materials, labor-*
17 *hour, or price-redeterminable contract, or any*
18 *combination of such contracts, made by that ex-*
19 *ecutive agency under this title; and*

20 *“(B) a subcontractor performing any sub-*
21 *contract under such a contract or combination of*
22 *contracts; and*

23 *“(2) shall, for the purpose of evaluating the accu-*
24 *racy, completeness, and currency of cost or pricing*
25 *data required to be submitted pursuant to section*

1 304B with respect to a contract or subcontract, have
2 the right to examine all records of the contractor or
3 subcontractor related to—

4 “(A) the proposal for the contract or sub-
5 contract;

6 “(B) the discussions conducted on the pro-
7 posal;

8 “(C) pricing of the contract or subcontract;
9 or

10 “(D) performance of the contract or sub-
11 contract.

12 “(b) COMPTROLLER GENERAL AUTHORITY.—(1) Ex-
13 cept as provided in paragraph (2), each contract awarded
14 after using procedures other than sealed bid procedures shall
15 provide that the Comptroller General and his representa-
16 tives are entitled to examine any records of the contractor,
17 or any of its subcontractors, that directly pertain to, and
18 involve transactions relating to, the contract or subcontract.

19 “(2) Paragraph (1) does not apply to a contract or
20 subcontract with a foreign contractor or foreign subcontrac-
21 tor if the agency head concerned determines, with the con-
22 currence of the Comptroller General or his designee, that
23 the application of that paragraph to the contract or sub-
24 contract would not be in the public interest. However, the

1 concurrence of the Comptroller General or his designee is
2 not required—

3 “(A) where the contractor or subcontractor is a
4 foreign government or agency thereof or is precluded
5 by the laws of the country involved from making its
6 records available for examination; and

7 “(B) where the agency head determines, after
8 taking into account the price and availability of the
9 property and services from United States sources, that
10 the public interest would be best served by not apply-
11 ing paragraph (1).

12 “(c) *AUTHORITY TO USE OTHER AGENCY AUDIT FOR*
13 *PRE-AWARD AUDIT.*—In any case in which the head of an
14 agency proposes to examine the records of a contractor or
15 subcontractor related to a proposal for a contract or sub-
16 contract (as authorized by subsection (a)(2)(A)), the head
17 of the agency may use the results of an audit conducted
18 by a Federal Government audit agency within the previous
19 year if the contracting officer determines that the objectives
20 of the proposed pre-award audit reasonably can be met by
21 the other audit.

22 “(d) *LIMITATION.*—The right of an agency head under
23 subsection (a), and the right of the Comptroller General
24 under subsection (b), with respect to a contract or sub-

1 *contract shall expire three years after final payment under*
2 *such contract or subcontract.*

3 “(e) *INAPPLICABILITY TO CERTAIN CONTRACTS.*—*This*
4 *section does not apply to the following contracts:*

5 “(1) *Contracts for utility services at rates not ex-*
6 *ceeding those established to apply uniformly to the*
7 *public, plus any applicable reasonable connection*
8 *charge.*

9 “(f) *FORM OF ORIGINAL RECORD STORAGE.*—*Nothing*
10 *in this section shall be construed to preclude a contractor*
11 *from duplicating or storing original records in electronic*
12 *form.*

13 “(g) *USE OF IMAGES OF ORIGINAL RECORDS.*—*The*
14 *head of an agency shall not require a contractor or sub-*
15 *contractor to provide original records in an audit carried*
16 *out pursuant to this section if the contractor or subcontract-*
17 *or provides photographic or electronic images of the origi-*
18 *nal records and meets the following requirements:*

19 “(1) *The contractor or subcontractor has estab-*
20 *lished procedures to ensure that the imaging process*
21 *preserves the integrity, reliability, and security of the*
22 *original records.*

23 “(2) *The contractor or subcontractor maintains*
24 *an effective indexing system to permit timely and*
25 *convenient access to the imaged records.*

1 “(3) The contractor or subcontractor retains the
2 original records for a minimum of one year after im-
3 aging to permit periodic validation of the imaging
4 systems.

5 “(h) *RECORDS DEFINED.*—In this section, the term
6 ‘records’ includes books, documents, accounting procedures
7 and practices, and other data, regardless of type and re-
8 gardless of whether such items are in written form, in the
9 form of computer data, or in any other form.”.

10 (b) *REPEAL OF SUPERSEDED PROVISION.*—Section
11 304 of the Federal Property and Administrative Services
12 Act of 1949 (41 U.S.C. 254) is amended by striking out
13 subsection (c).

14 ***Subtitle D—Cost Accounting*** 15 ***Standards***

16 ***SEC. 2301. REPEAL OF OBSOLETE DEADLINE REGARDING*** 17 ***PROCEDURAL REGULATIONS FOR THE COST*** 18 ***ACCOUNTING STANDARDS BOARD.***

19 Section 26(f)(3) of the Office of Federal Procurement
20 Policy Act (41 U.S.C. 422(f)(3)) is amended in the first
21 sentence by striking out “Not later than 180 days after the
22 date of enactment of this section, the Administrator” and
23 inserting in lieu thereof “The Administrator”.

1 ***Subtitle E—Administration of Con-***
 2 ***tract Provisions Relating to***
 3 ***Price, Delivery, and Product***
 4 ***Quality***

5 ***SEC. 2401. CLARIFICATION OF PROVISION RELATING TO***
 6 ***QUALITY CONTROL OF CERTAIN SPARE***
 7 ***PARTS.***

8 *The second sentence of subsection (a) of section 2383*
 9 *of title 10, United States Code, is amended to read as fol-*
 10 *lows: “In establishing the appropriate qualification require-*
 11 *ments, the Secretary of Defense shall use the Department*
 12 *of Defense qualification requirements that were used to*
 13 *qualify the original production part, unless the Secretary*
 14 *determines in writing—*

15 *“(1) that there are other requirements suffi-*
 16 *ciently similar to those requirements that should be*
 17 *used instead; or*

18 *“(2) that any or all such requirements are un-*
 19 *necessary.”.*

20 ***SEC. 2402. CONTRACTOR GUARANTEES REGARDING WEAP-***
 21 ***ON SYSTEMS.***

22 *(a) REPEAL OF REQUIREMENT FOR REPORT ON WAIV-*
 23 *ERS.—Subsection (e) of section 2403 of title 10, United*
 24 *States Code, is amended—*

25 *(1) by striking out “(1)”;* and

1 (2) by striking out paragraph (2).

2 (b) PROVISIONS TO BE ADDRESSED BY REGULA-
3 TIONS.—Subsection (h) of such section is amended—

4 (1) by redesignating paragraph (2) as para-
5 graph (3); and

6 (2) by inserting after paragraph (1) the follow-
7 ing new paragraph (2):

8 “(2) The regulations shall include the following:

9 “(A) Guidelines for negotiating contractor guar-
10 antees that are reasonable and cost effective, as deter-
11 mined on the basis of the likelihood of defects and the
12 estimated cost of correcting such defects.

13 “(B) Procedures for administering contractor
14 guarantees.

15 “(C) Guidelines for determining the cases in
16 which it may be appropriate to waive the require-
17 ments of this section.”.

18 **Subtitle F—Claims and Disputes**

19 **SEC. 2501. CERTIFICATION OF CONTRACT CLAIMS.**

20 (a) DOD CERTIFICATION REQUIREMENT IN CONFLICT
21 WITH GOVERNMENT-WIDE REQUIREMENT.—

22 (1) REPEAL.—Section 2410 of title 10, United
23 States Code, is repealed.

24 (2) CLERICAL AMENDMENT.—The table of sec-
25 tions at the beginning of chapter 141 of such title is

1 *amended by striking out the item relating to section*
2 *2410.*

3 **(b) REPEAL OF SUPERSEDED PROVISION.**—Section
4 *813(b) of the National Defense Authorization Act for Fiscal*
5 *Year 1993 (Public Law 102–484; 106 Stat. 2453), is re-*
6 *pealed.*

7 **(c) RESTRICTION ON LEGISLATIVE PAYMENT OF**
8 **CLAIMS.**—Section 2410e of title 10, United States Code, is
9 *amended by adding at the end the following new subsection:*

10 **“(d) RESTRICTION ON LEGISLATIVE PAYMENT OF**
11 **CLAIMS.**—*In the case of a contract of an agency named in*
12 *section 2303(a) of this title, no provision of a law enacted*
13 *after the date of the enactment of the Federal Acquisition*
14 *Improvement Act of 1994 that directs the payment of a par-*
15 *ticular claim under such contract, a particular request for*
16 *equitable adjustment to any term of such contract, or a par-*
17 *ticular request for relief under Public Law 85–804 (50*
18 *U.S.C. 1431 et seq.) regarding such contract may be imple-*
19 *mented unless such provision of law—*

20 *“(1) specifically refers to this subsection; and*

21 *“(2) specifically states that this subsection does*
22 *not apply with respect to the payment directed by*
23 *that provision of law.”.*

1 **TITLE III—MAJOR SYSTEMS AND**
 2 **SERVICE SPECIFIC STATUTES**

3 **Subtitle A—Major Systems Statutes**

4 **SEC. 3001. WEAPON DEVELOPMENT AND PROCUREMENT**
 5 **SCHEDULES.**

6 (a) *DEADLINE AND PURPOSE.*—Subsection (a) of sec-
 7 tion 2431 of title 10, United States Code, is amended—

8 (1) *in the first sentence—*

9 (A) *by striking out “at the same time” and*
 10 *inserting in lieu thereof “not later than 45 days*
 11 *after”;* and

12 (B) *by striking out “a written report” and*
 13 *inserting in lieu thereof “budget justification*
 14 *documents”;* and

15 (2) *in the second and third sentences, by striking*
 16 *out “report” and inserting in lieu thereof “docu-*
 17 *ments”.*

18 (b) *ADDITIONAL MATTERS TO BE INCLUDED.*—Sub-
 19 section (b) of such section is amended—

20 (1) *by striking out “include—” and inserting in*
 21 *lieu thereof “include each of the following:”;*

22 (2) *by capitalizing the first word in each of*
 23 *paragraphs (1), (2), and (3);*

1 (3) by striking out the semicolon at the end of
2 paragraphs (1) and (2) and inserting in lieu thereof
3 a period;

4 (4) by striking out “; and” at the end of para-
5 graph (3) and inserting in lieu thereof a period; and

6 (5) by amending paragraph (4) to read as fol-
7 lows:

8 “(4)(A) The most efficient production rate, the
9 most efficient acquisition rate, and the minimum sus-
10 taining rate, consistent with the program priority es-
11 tablished for such weapon system by the Secretary
12 concerned.

13 “(B) In this paragraph:

14 “(i) The term ‘most efficient production
15 rate’ means the maximum rate for each budget
16 year at which the weapon system can be pro-
17 duced with existing or planned plant capacity
18 and tooling, with one shift a day running for
19 eight hours a day and five days a week.

20 “(ii) The term ‘minimum sustaining rate’
21 means the production rate for each budget year
22 that is necessary to keep production lines open
23 while maintaining a base of responsive vendors
24 and suppliers.”.

1 **SEC. 3002. SELECTED ACQUISITION REPORT REQUIREMENT.**

2 (a) *DEFINITION OF PROCUREMENT UNIT COST.*—

3 (1) *DEFINITION.*—Paragraph (2) of section
4 2432(a) of title 10, United States Code, is amended—

5 (A) in clause (A), by striking out “for a fis-
6 cal year” and all that follows through “such pro-
7 gram in such fiscal year”;

8 (B) in clause (B), by striking out “with
9 such funds during such fiscal year.” and insert-
10 ing in lieu thereof a period; and

11 (C) by striking out the last sentence.

12 (2) *CONFORMING AMENDMENTS.*—Section 2433
13 of such title is amended—

14 (A) in subparagraph (B) of subsection
15 (c)(1), by striking out “current” before “procure-
16 ment unit cost”;

17 (B) in subsection (d), by striking out “cur-
18 rent” before “procurement unit cost” each place
19 it appears; and

20 (C) in subsection (e), by striking out “cur-
21 rent” before “procurement unit cost” both places
22 it appears.

23 (b) *EXCLUSION OF FIRM, FIXED-PRICE CONTRACTS.*—

24 Subsection (a) of section 2432 of such title is amended in
25 paragraph (3) by inserting before the period at the end the
26 following: “and that is not a firm, fixed price contract”.

1 (c) *DEFINITION OF FULL LIFE-CYCLE COST.*—Such
2 subsection is further amended in paragraph (4) by striking
3 out “has the meaning” and all that follows through the end
4 of the paragraph and inserting in lieu thereof the following:
5 “means all costs of development, procurement, military con-
6 struction, and operations and support, without regard to
7 funding source or management control.”.

8 (d) *NOTICE OF PROPOSED CHANGES IN SAR.*—Sub-
9 section (c) of such section is amended in paragraph (2) by
10 striking out the second sentence and inserting in lieu thereof
11 the following: “Whenever the Secretary of Defense proposes
12 to make changes in the content of a Selected Acquisition
13 Report, the Secretary shall submit a notice of the proposed
14 changes to such committees. The changes shall be considered
15 approved by the Secretary, and may be incorporated into
16 the report, only after the end of the 60-day period beginning
17 on the date on which the notice is received by those commit-
18 tees.”.

19 (e) *ELIMINATION OF CERTAIN SAR REQUIREMENTS.*—
20 Such subsection is further amended in paragraph (3) by
21 striking out subparagraph (C).

22 (f) *UNIFORM IMPLEMENTATION OF LIFE-CYCLE COST*
23 *ANALYSIS.*—Such subsection is further amended—
24 (1) by striking out paragraph (5); and

1 (2) *by adding at the end of subparagraph (A) of*
2 *paragraph (3) the following: “The Secretary of De-*
3 *fense shall ensure that this subparagraph is imple-*
4 *mented in a uniform manner, to the extent prac-*
5 *ticable, throughout the Department of Defense.”.*

6 (g) *DEADLINE REVISION.*—*Subsection (f) of such sec-*
7 *tion is amended by striking out “60 days” in the first sen-*
8 *tence and inserting in lieu thereof “45 days”.*

9 (h) *ELIMINATION OF PRELIMINARY REPORT.*—*Such*
10 *subsection is further amended by striking out the second*
11 *sentence.*

12 (i) *TERMINOLOGY CORRECTIONS.*—*Such section is fur-*
13 *ther amended as follows:*

14 (1) *Subsection (b)(3)(A) is amended by striking*
15 *out “full scale development or” in clause (i).*

16 (2) *Subsection (c)(3) is amended by striking out*
17 *“full-scale engineering” in subparagraph (A) and in-*
18 *serting in lieu thereof “engineering and manufactur-*
19 *ing”.*

20 (3) *Subsection (h)(1) is amended by striking out*
21 *“full-scale engineering” both places it appears and in-*
22 *serting in lieu thereof “engineering and manufactur-*
23 *ing”.*

24 **SEC. 3003. UNIT COST REPORT REQUIREMENT.**

25 (a) *REVISION OF BASELINE REPORT DEFINITIONS.*—

1 (1) *REVISION.*—Section 2433(a) of title 10,
2 *United States Code*, is amended—

3 (A) in paragraph (2)—

4 (i) by striking out “Baseline Selected
5 *Acquisition Report*” and inserting in lieu
6 thereof “Baseline Estimate”; and

7 (ii) by striking out “Selected Acquisi-
8 tion Report in which” and all that follows
9 through the end of the paragraph and in-
10 serting in lieu thereof “cost estimate in-
11 cluded in the baseline description for the
12 program under section 2435 of this title.”;
13 and

14 (B) by striking out paragraph (4).

15 (2) *CONFORMING AMENDMENTS.*—Section 2433
16 of such title is further amended—

17 (A) in subsection (c)(1), by striking out
18 “Baseline Report” in subparagraphs (A) and
19 (B) and inserting in lieu thereof “Baseline Esti-
20 mate”; and

21 (B) in subsection (d), by striking out “Base-
22 line Report” in paragraphs (1) and (2) and in-
23 serting in lieu thereof “Baseline Estimate”.

24 (b) *CONTENTS OF UNIT COST REPORT.*—Section
25 2433(b) of such title is amended in paragraph (3) by strik-

1 ing out “Baseline Report was submitted.” and inserting in
 2 lieu thereof “contract was entered into.”.

3 (c) *ELIMINATION OF CERTAIN UNIT COST REPORT RE-*
 4 *QUIREMENT.*—Section 2433(c) of such title, as amended by
 5 subsection (a), is further amended—

6 (1) by striking out paragraph (2);

7 (2) by striking out “(1)” after “(c)”; and

8 (3) by redesignating subparagraphs (A), (B),
 9 and (C) as paragraphs (1), (2), and (3), respectively.

10 (d) *CONSTANT BASE YEAR DOLLARS.*—Section 2433(f)
 11 of such title is amended by striking out “include expected
 12 inflation” and inserting in lieu thereof “be stated in terms
 13 of constant base year dollars (as described in section 2430
 14 of this title)”.

15 (e) *CONTENTS OF SAR.*—Subparagraph (I) of section
 16 2433(g)(1) of such title is amended to read as follows:

17 “(I) The type of the Baseline Estimate that was
 18 included in the baseline description under section
 19 2435 of this title and the date of the Baseline Esti-
 20 mate.”.

21 **SEC. 3004. REQUIREMENT FOR INDEPENDENT COST ESTI-**
 22 **MATES AND MANPOWER ESTIMATES BEFORE**
 23 **DEVELOPMENT OR PRODUCTION.**

24 (a) *CONTENT AND SUBMISSION OF ESTIMATES.*—Sec-
 25 tion 2434 of title 10, United States Code, is amended by

1 *striking out subsection (b) and inserting in lieu thereof the*
2 *following:*

3 “(b) *REGULATIONS.*—*The Secretary of Defense shall*
4 *prescribe regulations governing the content and submission*
5 *of the estimates required by subsection (a). The regulations*
6 *shall require—*

7 “(1) *that the independent estimate of the full*
8 *life-cycle cost of a program—*

9 “(A) *be prepared by an office or other en-*
10 *tity that is not directly responsible for carrying*
11 *out the development or acquisition of the pro-*
12 *gram; and*

13 “(B) *include all costs of development, pro-*
14 *curement, military construction, and operations*
15 *and support, without regard to funding source or*
16 *management control; and*

17 “(2) *that the manpower estimate include the*
18 *total personnel required—*

19 “(A) *to operate, maintain, and support the*
20 *program upon full operational deployment; and*

21 “(B) *to train personnel to carry out the ac-*
22 *tivities referred to in subparagraph (A).”.*

23 (b) *TERMINOLOGY CORRECTION AND OTHER AMEND-*
24 *MENT.*—*Subsection (a) of such section is amended—*

1 (1) by striking out “full-scale engineering devel-
2 opment” and inserting in lieu thereof “engineering
3 and manufacturing development”; and

4 (2) by striking out “cost of the program, together
5 with” and inserting in lieu thereof “full life-cycle cost
6 of the program, and”.

7 **SEC. 3005. BASELINE DESCRIPTION.**

8 (a) *IN GENERAL.*—Section 2435 of title 10, United
9 States Code, is amended to read as follows:

10 **“§ 2435. Baseline description**

11 “(a) *BASELINE DESCRIPTION REQUIREMENT.*—(1)
12 The Secretary of a military department shall establish a
13 baseline description for each major defense acquisition pro-
14 gram under the jurisdiction of such Secretary.

15 “(2) The baseline shall include sufficient parameters
16 to describe the cost estimate (referred to as the ‘Baseline
17 Estimate’ in section 2433 of this title), schedule, and per-
18 formance of such major defense acquisition program.

19 “(3) No amount appropriated or otherwise made
20 available to the Department of Defense for carrying out a
21 major defense acquisition program may be obligated with-
22 out an approved baseline description unless such obligation
23 is specifically approved by the Under Secretary of Defense
24 for Acquisition and Technology.

1 “(4) A baseline description for a major defense acqui-
2 sition program shall be established—

3 “(A) before the program enters engineering and
4 manufacturing development; and

5 “(B) before the program enters production and
6 deployment.

7 “(b) REGULATIONS.—The Secretary of Defense shall
8 prescribe regulations governing—

9 “(1) the content of baseline descriptions;

10 “(2) the submission of reports on deviations of a
11 program from the baseline description by the program
12 manager to the Secretary of the military department
13 concerned and the Under Secretary of Defense for Ac-
14 quisition and Technology;

15 “(3) procedures for review of such deviation re-
16 ports within the Department of Defense; and

17 “(4) procedures for submission to, and approval
18 by, the Secretary of Defense of revised baseline de-
19 scriptions.”.

20 (b) CLERICAL AMENDMENT.—The table of sections at
21 the beginning of chapter 144 of such title is amended by
22 amending the item relating to section 2435 to read as fol-
23 lows:

 “2435. Baseline description.”.

1 **SEC. 3006. REPEAL OF REQUIREMENT FOR COMPETITIVE**
 2 **PROTOTYPING IN MAJOR PROGRAMS.**

3 (a) *REPEAL.*—Section 2438 of title 10, United States
 4 Code, is repealed.

5 (b) *CLERICAL AMENDMENT.*—The table of sections at
 6 the beginning of chapter 144 of such title is amended by
 7 striking out the item relating to section 2438.

8 **SEC. 3007. REPEAL OF REQUIREMENT FOR COMPETITIVE**
 9 **ALTERNATIVE SOURCES IN MAJOR PRO-**
 10 **GRAMS.**

11 (a) *REPEAL.*—Section 2439 of title 10, United States
 12 Code, is repealed.

13 (b) *CLERICAL AMENDMENT.*—The table of sections at
 14 the beginning of chapter 144 of such title is amended by
 15 striking out the item relating to section 2439.

16 ***Subtitle B—Testing Statutes***

17 **SEC. 3011. AUTHORIZATION OF LESS THAN FULL-UP TEST-**
 18 **ING.**

19 Section 2366(c) of title 10, United States Code, is
 20 amended—

21 (1) by redesignating paragraph (2) as para-
 22 graph (4);

23 (2) by designating the second sentence of para-
 24 graph (1) as paragraph (3) and in that paragraph by
 25 striking out “such certification” and inserting in lieu

1 thereof “certification under paragraph (1) or (2)”;
2 and

3 (3) by inserting before paragraph (3) (as so des-
4 ignated) the following new paragraph:

5 “(2) In the case of a covered system (or covered product
6 improvement program for a covered system), the Secretary
7 may waive the application of the survivability and lethality
8 tests of this section to such system or program and instead
9 allow testing of the system or program in combat by firing
10 munitions likely to be encountered in combat at compo-
11 nents, subsystems, and subassemblies, together with per-
12 forming design analyses, modeling and simulation, and
13 analysis of combat data, if the Secretary certifies to Con-
14 gress that the survivability and lethality testing of such sys-
15 tem or program otherwise required by this section would
16 be unreasonably expensive and impracticable.”.

17 **SEC. 3012. LIMITATION ON QUANTITIES TO BE PROCURED**
18 **FOR LOW-RATE INITIAL PRODUCTION.**

19 Section 2400(a) of title 10, United States Code, is
20 amended—

21 (1) in paragraph (2)—

22 (A) by striking out “paragraph (1)” and
23 inserting in lieu thereof “this section”; and

1 (B) by striking out “full-scale engineering
2 development” and inserting in lieu thereof “engi-
3 neering and manufacturing development”;

4 (2) by redesignating paragraph (4) as para-
5 graph (5) and in that paragraph by inserting after
6 the first sentence the following: “If the quantity ex-
7 ceeds 10 percent of the total number of articles to be
8 produced, as determined at the milestone II decision
9 with respect to that system, the Secretary shall in-
10 clude in the statement the reasons for such quantity.”;
11 and

12 (3) by inserting after paragraph (3) the follow-
13 ing new paragraph (4):

14 “(4) The quantity of articles of a major system that
15 may be procured for low-rate initial production may not
16 be less than one operationally configured production unit
17 unless another quantity is established at the milestone II
18 decision.”.

19 **SEC. 3013. OPERATIONAL TEST AND EVALUATION OF DE-**
20 **FENSE ACQUISITION PROGRAMS.**

21 (a) *AUTHORITY TO USE DIFFERENT PROCEDURES.*—
22 Section 2399(b) of title 10, United States Code, is amend-
23 ed—

24 (1) by redesignating paragraph (5) as para-
25 graph (6); and

1 (2) by inserting after paragraph (4) the follow-
2 ing new paragraph (5):

3 “(5) The Secretary of Defense may, for a particular
4 major defense acquisition program, prescribe and apply
5 operational test and evaluation procedures other than those
6 provided under subsection (a) and paragraphs (1) through
7 (3) of this subsection if the Secretary transmits to Congress,
8 before the Milestone II decision is made with respect to that
9 program—

10 “(A) a certification that such testing would be
11 unreasonably expensive and impracticable; and

12 “(B) a description of the actions taken to ensure
13 that the system will be operationally effective and
14 suitable when the system meets initial operational ca-
15 pability requirements.”.

16 (b) CROSS REFERENCE CORRECTIONS.—Section 2399
17 of such title is further amended—

18 (1) in subsection (b)(6) (as redesignated by sub-
19 section (a)(1)) and subsection (c)(1), by striking out
20 “section 138(a)(2)(B)” and inserting in lieu thereof
21 “section 139(a)(2)(B)”; and

22 (2) in subsection (h)(1), by striking out “section
23 138(a)(2)(A)” and inserting in lieu thereof “section
24 139(a)(2)(A)”.

1 ***Subtitle C—Civil Reserve Air Fleet***

2 ***SEC. 3021. DEFINITION OF CONTRACTOR.***

3 *Section 9511(8) of title 10, United States Code, is*
 4 *amended—*

5 *(1) by striking out “or” at the end of clause (A);*
 6 *and*

7 *(2) by inserting before the period at the end the*
 8 *following: “; or (C) who owns or controls, or will own*
 9 *or control, new or existing aircraft and who, by con-*
 10 *tract, commits some or all of such aircraft to the Civil*
 11 *Reserve Air Fleet”.*

12 ***SEC. 3022. CONSOLIDATION OF PROVISIONS RELATING TO*** 13 ***CONTRACTUAL COMMITMENT OF AIRCRAFT.***

14 *Chapter 931 of title 10, United States Code, is amend-*
 15 *ed—*

16 *(1) in subsection (a) of section 9512, by inserting*
 17 *“AUTHORITY TO CONTRACT.—” after “(a)”;*

18 *(2) in subsection (c) of section 9512, by striking*
 19 *out “(c)” and inserting in lieu thereof “(d) AUTHOR-*
 20 *ITY TO CONTRACT AND PAY DIRECTLY.—”;*

21 *(3) in subsection (b) of section 9512, by striking*
 22 *out “(b)” and inserting in lieu thereof “(c) TERMS*
 23 *AND REQUIRED REPAYMENT.—”;*

24 *(4) by redesignating subsection (a) of section*
 25 *9513 as subsection (b) and transferring such sub-*

1 *section (as so redesignated) to section 9512 and in-*
2 *serting such subsection after subsection (a);*

3 *(5) by redesignating subsection (b) of section*
4 *9513 as subsection (e) and transferring such sub-*
5 *section (as so redesignated) to the end of section 9512;*

6 *(6) in subsection (b) of section 9512, as redesign-*
7 *ated and transferred to such section by paragraph*
8 *(4)—*

9 *(A) by striking out “under section 9512 of*
10 *this title” and inserting in lieu thereof “entered*
11 *into under this section”, and*

12 *(B) by inserting “CONTRACT REQUIRE-*
13 *MENTS.—” after “(b)”;*

14 *(7) in subsection (c) of section 9512, as redesign-*
15 *ated by paragraph (3), by striking out “the terms*
16 *required by section 9513 of this title and”;*

17 *(8) in subsection (e) of section 9512, as redesign-*
18 *ated and transferred to such section by paragraph*
19 *(5)—*

20 *(A) by striking out “under section 9512 of*
21 *this title” and inserting in lieu thereof “entered*
22 *into under this section”, and*

23 *(B) by inserting “COMMITMENT TO CIVIL*
24 *RESERVE AIR FLEET.—” after “(e)”;* and

25 *(9) by striking out the heading of section 9513.*

1 **SEC. 3023. USE OF MILITARY INSTALLATIONS BY CONTRAC-**
2 **TORS.**

3 (a) *AUTHORITY.*—Chapter 931 of title 10, United
4 States Code, as amended by section 3022, is further amend-
5 ed by adding at the end the following new section 9513:

6 **“§9513. Use of military installations by Civil Reserve**
7 **Air Fleet contractors**

8 “(a) *CONTRACT AUTHORITY.*—(1) The Secretary of the
9 Air Force—

10 “(A) may, by contract entered into with any
11 contractor, authorize such contractor to use one or
12 more Air Force installations designated by the Sec-
13 retary; and

14 “(B) with the consent of the Secretary of another
15 military department, may, by contract entered into
16 with any contractor, authorize the contractor to use
17 one or more installations, designated by the Secretary
18 of the Air Force, that is under the jurisdiction of the
19 Secretary of such other military department.

20 “(2) The Secretary of the Air Force may include in
21 the contract such terms and conditions as the Secretary de-
22 termines appropriate to promote the national defense or to
23 protect the interests of the United States.

24 “(b) *PURPOSES OF USE.*—A contract entered into
25 under subsection (a) may authorize use of a designated in-
26 stallation as a weather alternate, a technical stop not in-

1 *volving the enplaning or deplaning of passengers or cargo,*
2 *or, in the case of an installation within the United States,*
3 *for other commercial purposes. Notwithstanding any other*
4 *provision of the law, the Secretary may establish different*
5 *levels and types of uses for different installations and may*
6 *provide in contracts under subsection (a) for different levels*
7 *and types of uses by different contractors.*

8 “(c) *HOLD HARMLESS REQUIREMENT.*—A contract
9 *entered into under subsection (a) shall provide that the con-*
10 *tractor agrees to indemnify and hold harmless the Air Force*
11 *(and any other armed force having jurisdiction over any*
12 *installation covered by the contract) from all actions, suits,*
13 *or claims of any sort resulting from, relating to, or arising*
14 *out of any activities conducted, or services or supplies fur-*
15 *nished, in connection with the contract.*

16 “(d) *RESERVATION OF RIGHT TO EXCLUDE CONTRAC-*
17 *TOR.*—A contract entered into under subsection (a) shall
18 *provide that the Secretary concerned may, without provid-*
19 *ing prior notice, deny access to an installation designated*
20 *under the contract when the Secretary determines that it*
21 *is necessary to do so in order to meet military exigencies.”.*

22 (b) *CLERICAL AMENDMENT.*—The table of sections at
23 *the beginning of such chapter is amended by striking out*
24 *the item relating to section 9513 and inserting in lieu there-*
25 *of the following:*

“9513. Use of military installations by Civil Reserve Air Fleet contractors.”.

1 ***Subtitle D—Miscellaneous***

2 ***SEC. 3051. EXTENSION TO DEPARTMENT OF DEFENSE GEN-***
 3 ***ERALLY OF PROVISION RELATING TO MANU-***
 4 ***FACTURE AT FACTORIES AND ARSENALS.***

5 (a) *CONSOLIDATION, REVISION, AND EXTENSION TO*
 6 *DEPARTMENT OF DEFENSE OF AUTHORITY.—(1) Sub-*
 7 *chapter V of chapter 148 of title 10, United States Code,*
 8 *is amended by adding at the end the following new section:*

9 ***“§2542. Factories and arsenals: manufacture at***

10 *“(a) The Secretary of Defense or the Secretary of a*
 11 *military department may have supplies needed for the De-*
 12 *partment of Defense or such military department, as the*
 13 *case may be, made in factories or arsenals owned by the*
 14 *United States.*

15 *“(b) The Secretary of Defense or the Secretary of the*
 16 *military department concerned may abolish any United*
 17 *States arsenal that such Secretary considers unnecessary.”.*

18 (2) *The table of sections at the beginning of subchapter*
 19 *V of such chapter is amended by adding at the end the fol-*
 20 *lowing new item:*

“2542. Factories and arsenals: manufacture at.”.

21 (b) *REPEAL OF SUPERSEDED AUTHORITY.—*

22 (1) *ARMY AUTHORITY.—*

23 (A) *REPEAL.—Section 4532 of title 10,*
 24 *United States Code, is repealed.*

1 (B) *CLERICAL AMENDMENT.*—*The table of*
 2 *sections at the beginning of chapter 433 of such*
 3 *title is amended by striking out the item relating*
 4 *to section 4532.*

5 (2) *AIR FORCE AUTHORITY.*—

6 (A) *REPEAL.*—*Section 9532 of title 10,*
 7 *United States Code, is repealed.*

8 (B) *CLERICAL AMENDMENT.*—*The table of*
 9 *sections at the beginning of chapter 933 of such*
 10 *title is amended by striking out the item relating*
 11 *to section 9532.*

12 ***SEC. 3052. CODIFICATION OF ACCOUNTING REQUIREMENT***
 13 ***FOR CONTRACTED ADVISORY AND ASSIST-***
 14 ***ANCE SERVICES.***

15 (a) *FUNDING TO BE IDENTIFIED IN BUDGET.*—*Sec-*
 16 *tion 1105 of title 31, United States Code, is amended by*
 17 *adding at the end the following new subsection:*

18 “(g)(1) *The Director of the Office of Management and*
 19 *Budget shall establish the funding for consulting services*
 20 *for each department and agency as a separate object class*
 21 *in each budget annually submitted to the Congress under*
 22 *this section.*

23 “(2) *In this subsection, consulting services include—*

24 “(A) *management and professional support serv-*
 25 *ices;*

1 “(B) studies, analyses, and evaluations;

2 “(C) engineering and technical services (exclud-
3 ing routine engineering services such as automated
4 data processing and architect and engineering con-
5 tracts); and

6 “(D) research and development.”.

7 (b) *REPEAL OF SOURCE LAW.*—Section 512 of Public
8 Law 102–394 (106 Stat. 1826) is repealed.

9 (c) *REPEAL OF SUPERSEDED PROVISIONS.*—

10 (1) *DOD SPECIFIC LAW.*—Section 2212 of title
11 10, United States Code, is repealed.

12 (2) *GOVERNMENT-WIDE LAW.*—Section 1114 of
13 title 31, United States Code, is repealed.

14 (3) *CLERICAL AMENDMENTS.*—The table of sec-
15 tions at the beginning of chapter 131 of title 10, Unit-
16 ed States Code, is amended by striking out the item
17 relating to section 2212. The table of sections at the
18 beginning of chapter 11 of title 31, United States
19 Code, is amended by striking out the item relating to
20 section 1114.

21 **SEC. 3053. REGULATIONS ON PROCUREMENT, PRODUCTION,**
22 **WAREHOUSING, AND SUPPLY DISTRIBUTION**
23 **FUNCTIONS.**

24 (a) *IN GENERAL.*—Section 2202 of title 10, United
25 States Code, is amended to read as follows:

1 **“§ 2202. Regulations on procurement, production,**
 2 **warehousing, and supply distribution**
 3 **functions**

4 “The Secretary of Defense shall prescribe regulations
 5 governing the performance within the Department of De-
 6 fense of the procurement, production, warehousing, and
 7 supply distribution functions, and related functions, of the
 8 Department of Defense.”.

9 (b) CLERICAL AMENDMENT.—The table of sections at
 10 the beginning of chapter 131 of such title is amended by
 11 striking out the item related to section 2202 and inserting
 12 in lieu thereof the following:

“2202. Regulations on procurement, production, warehousing, and supply dis-
 tribution functions.”.

13 **SEC. 3054. REPEAL OF REQUIREMENTS REGARDING PROD-**
 14 **UCT EVALUATION ACTIVITIES.**

15 (a) REPEAL.—Section 2369 of title 10, United States
 16 Code, is repealed.

17 (b) CLERICAL AMENDMENT.—The table of sections at
 18 the beginning of chapter 139 of such title is amended by
 19 striking out the item related to section 2369.

1 **SEC. 3055. CODIFICATION AND REVISION OF LIMITATION**
2 **ON LEASE OF VESSELS, AIRCRAFT, AND VEHI-**
3 **CLES.**

4 (a) *LIMITATION.*—(1) Chapter 141 of title 10, United
5 States Code, is amended by inserting after section 2401 the
6 following new section:

7 **“§ 2401a. Lease of vessels, aircraft, and vehicles**

8 “The Secretary of Defense or the Secretary of a mili-
9 tary department may not enter into any contract with a
10 term of 18 months or more, or extend or renew any contract
11 for a term of 18 months or more, for any vessel, aircraft,
12 or vehicle, through a lease, charter, or similar agreement,
13 unless the Secretary has considered all costs of such contract
14 (including estimated termination liability) and has deter-
15 mined in writing that the contract is in the best interest
16 of the Government.”.

17 (2) The table of sections at the beginning of such chap-
18 ter is amended by inserting after the item relating to section
19 2401 the following new item:

“2401a. Lease of vessels, aircraft, and vehicles.”.

20 (b) *REPEAL OF SUPERSEDED PROVISION.*—Section
21 9081 of Public Law 101–165 (103 Stat. 1147; 10 U.S.C.
22 2401 note) is repealed.

1 **SEC. 3056. REPEAL OF APPLICATION OF PUBLIC CON-**
 2 **TRACTS ACT TO CERTAIN NAVAL VESSEL**
 3 **CONTRACTS.**

4 (a) *REPEAL.*—Section 7299 of title 10, United States
 5 Code, is repealed.

6 (b) *CLERICAL AMENDMENT.*—The table of sections at
 7 the beginning of chapter 633 of such title is amended by
 8 striking out the item relating to section 7299.

9 **TITLE IV—SIMPLIFIED ACQUI-**
 10 **SITION THRESHOLD AND SO-**
 11 **CIOECONOMIC, SMALL BUSI-**
 12 **NESS, AND MISCELLANEOUS**
 13 **LAWS**

14 **Subtitle A—Simplified Acquisition**
 15 **Threshold**

16 **PART I—ESTABLISHMENT OF THRESHOLD**

17 **SEC. 4001. ESTABLISHMENT OF SIMPLIFIED ACQUISITION**
 18 **THRESHOLD.**

19 *The Office of Federal Procurement Policy Act (41*
 20 *U.S.C. 401 et seq.) is amended by inserting after section*
 21 *4 the following new section:*

22 **“SEC. 4A. SIMPLIFIED ACQUISITION THRESHOLD.**

23 *“(a) IN GENERAL.—The simplified acquisition thresh-*
 24 *old for purposes of Federal acquisitions is (except as pro-*

1 *vided in subsection (b)) the amount of \$25,000, as adjusted*
2 *pursuant to subsection (c).*

3 “(b) *AGENCIES WITH FACNET CAPABILITY.*—In the
4 *case of an agency for which there is in effect a certification*
5 *under section 2302b(c) of title 10, United States Code, or*
6 *section 302B(c) of the Federal Property and Administrative*
7 *Services Act of 1949 with respect to implementation of a*
8 *FACNET capability, the simplified acquisition threshold is*
9 *the amount of \$100,000, as adjusted pursuant to subsection*
10 *(c).*

11 “(c) *PERIODIC ADJUSTMENT FOR INFLATION.*—The
12 *dollar amount in effect under subsection (a) shall be ad-*
13 *justed on October 1 of each year divisible by 5 to the equiva-*
14 *lent amount in constant fiscal year 1990 dollars (rounded*
15 *to the nearest \$1,000). The dollar amount in effect under*
16 *subsection (b) shall be adjusted on October 1 of each year*
17 *divisible by 5 to the equivalent amount in constant fiscal*
18 *year 1993 dollars (rounded to the nearest \$1,000).*

19 “(d) *SPECIAL RULE FOR CONTINGENCY OPER-*
20 *ATIONS.*—In the case of a contract to be awarded and per-
21 *formed, or a purchase to be made, outside the United States*
22 *in support of a contingency operation (as defined in section*
23 *101(a)(13) of title 10, United States Code), the amounts*
24 *in effect under subsections (a) and (b) shall be two times*
25 *the amounts otherwise applicable.”.*

1 **SEC. 4002. FEDERAL ACQUISITION COMPUTER NETWORK.**

2 (a) *FEDERAL ACQUISITION COMPUTER NETWORK.*—
3 *The Office of Federal Procurement Policy Act (41 U.S.C.*
4 *401 et seq.) is amended by adding after section 28 the fol-*
5 *lowing new section:*

6 **“SEC. 29. FEDERAL ACQUISITION COMPUTER NETWORK**
7 **(FACNET).**

8 “(a) *IN GENERAL.*—(1) *The Administrator shall estab-*
9 *lish a program for the development and implementation of*
10 *a Federal acquisition computer network (hereinafter in this*
11 *section referred to as the ‘FACNET’). The Administrator*
12 *shall assign a program manager for the FACNET and shall*
13 *provide for overall direction of policy and leadership in the*
14 *development, coordination, installation, operation, and*
15 *completion of implementation of the FACNET by executive*
16 *agencies.*

17 “(2) *In carrying out paragraph (1), the Administrator*
18 *shall consult with appropriate Federal agencies with appli-*
19 *cable technical and functional expertise, including the Na-*
20 *tional Institute of Standards and Technology, the General*
21 *Services Administration, and the Department of Defense.*

22 “(3) *The Administrator shall carry out paragraph (1)*
23 *not later than the date that is 5 years after the date of*
24 *enactment of the Federal Acquisition Improvement Act of*
25 *1994.*

1 “(b) *FUNCTIONS OF FACNET.*—The FACNET shall
2 *have the capacity to carry out the following functions:*

3 “(1) *GOVERNMENT FUNCTIONS.*—

4 “(A) *Provide widespread public notice of so-*
5 *licitations for contract opportunities issued by*
6 *an executive agency and of orders to be made by*
7 *the agency.*

8 “(B) *Allow responses to solicitations and re-*
9 *quests for information to be submitted to the con-*
10 *tracting activity through such system.*

11 “(C) *Allow public notice of contract awards*
12 *to be provided through such system.*

13 “(D) *In cases in which it is practicable,*
14 *allow questions regarding solicitations to be an-*
15 *swered through such system.*

16 “(E) *Allow orders to be made through such*
17 *system.*

18 “(F) *In cases in which it is practicable,*
19 *make payments to contractors by bank card, elec-*
20 *tronic funds transfer, or other automated meth-*
21 *ods.*

22 “(G) *Archive data relating to each procure-*
23 *ment action made using such system.*

24 “(2) *USER FUNCTIONS.*—*Allow private users to*
25 *electronically—*

1 “(A) access notice of solicitations for con-
2 tract opportunities issued by an agency and of
3 orders to be made by the agency;

4 “(B) selectively access and review solicita-
5 tions and orders issued by the agency;

6 “(C) respond to solicitations and notices of
7 orders issued by the agency;

8 “(D) receive orders from the agency;

9 “(E) access information on contract awards
10 made by the agency; and

11 “(F) in cases in which it is practicable, re-
12 ceive payment by bank card, electronic funds
13 transfer, or other automated means.

14 “(3) GENERAL FUNCTIONS.—

15 “(A) Allow the electronic exchange of pro-
16 curement information between the private sector
17 and the Federal Government.

18 “(B) Employ nationally and internation-
19 ally recognized data formats that serve to broad-
20 en and ease the electronic interchange of data.

21 “(C) Allow convenient and universal user
22 access through a single point of entry.

23 “(c) ANNUAL REPORTS TO CONGRESS.—The Adminis-
24 trator shall evaluate progress by executive agencies in im-
25 plementing the FACNET under this section. The Adminis-

1 *trator shall submit to the Congress, on the date that is one*
 2 *year after the date of the enactment of the Federal Acquisi-*
 3 *tion Improvement Act of 1994 and on that date in each*
 4 *of the 5 years thereafter, a report on the overall progress*
 5 *by the executive branch and by each executive agency in*
 6 *implementing this section.”.*

7 *(b) TECHNICAL AMENDMENTS.—Section 18 of the Of-*
 8 *fice of Federal Procurement Policy Act (41 U.S.C. 416) is*
 9 *amended—*

10 *(1) in subsection (a)(1)(A), by striking out “no-*
 11 *tice” in the matter following clause (ii) and inserting*
 12 *in lieu thereof “notice of solicitation”; and*

13 *(2) in subsection (d), by striking out “a notice*
 14 *under subsection (e)” in the first sentence and insert-*
 15 *ing in lieu thereof “a notice of solicitation under sub-*
 16 *section (a)”.*

17 **SEC. 4003. IMPLEMENTATION IN ARMED SERVICES.**

18 *(a) ESTABLISHMENT IN TITLE 10.—Chapter 137 of*
 19 *title 10, United States Code, is amended by inserting after*
 20 *section 2302 the following new sections:*

21 **“§ 2302a. Simplified acquisition threshold**

22 *“(a) SIMPLIFIED ACQUISITION THRESHOLD.—For*
 23 *purposes of acquisitions by agencies named in section 2303*
 24 *of this title, the simplified acquisition threshold is as speci-*
 25 *fied in section 4A of the Office of Federal Procurement Pol-*

1 icy Act, as in effect on the effective date of section 4001
2 of the Federal Acquisition Improvement Act of 1994.

3 **“§ 2302b. Implementation of FACNET capability**

4 “(a) IMPLEMENTATION OF FACNET CAPABILITY.—(1)
5 The head of each agency named in section 2303 of this title
6 shall implement the Federal acquisition computer network
7 (‘FACNET’) capability required by section 29 of the Office
8 of Federal Procurement Policy Act. In the case of the De-
9 partment of Defense, the implementation shall be by the
10 Secretary of Defense for the Department of Defense as a
11 whole. For purposes of this section, the term ‘head of an
12 agency’ does not include the Secretaries of the military de-
13 partments.

14 “(2) In implementing the FACNET capability pursu-
15 ant to paragraph (1), the head of an agency shall consult
16 with the Administrator for Federal Procurement Policy.

17 “(b) DESIGNATION OF AGENCY OFFICIAL.—The Sec-
18 retary of Defense shall designate the Under Secretary of De-
19 fense for Acquisition and Technology to have responsibility
20 for implementation of FACNET capability throughout the
21 Department of Defense. The head of each agency named in
22 paragraph (5) or (6) of section 2303 of this title shall des-
23 ignate a program manager to have responsibility for imple-
24 mentation of FACNET capability for that agency and oth-
25 erwise to implement this section.

1 “(c) *CERTIFICATION OF FACNET CAPABILITY.—(1)*
2 *When the head of an agency, with the concurrence of the*
3 *Administrator for Federal Procurement Policy, determines*
4 *that the agency has implemented an interim FACNET ca-*
5 *pability (as defined in subsection (f)), the head of the agen-*
6 *cy shall certify to Congress that the agency has implemented*
7 *an interim FACNET capability.*

8 “(2) *When the head of an agency, with the concurrence*
9 *of the Administrator for Federal Procurement Policy, deter-*
10 *mines that the agency has implemented a full FACNET ca-*
11 *pability (as defined in subsection (g)), the head of the agen-*
12 *cy shall certify to Congress that the agency has implemented*
13 *a full FACNET capability.*

14 “(3) *The head of each agency shall provide for imple-*
15 *mentation of both interim FACNET capability and full*
16 *FACNET capability, with priority on providing convenient*
17 *and universal user access as required by section 29(b)(3)(C)*
18 *of the Office of Federal Procurement Policy Act, in that*
19 *agency as soon as practicable after the date of the enactment*
20 *of the Federal Acquisition Improvement Act of 1994.*

21 “(d) *HIGHER SIMPLIFIED ACQUISITION THRESHOLD*
22 *WHEN FACNET CAPABILITY CERTIFIED.—A certification*
23 *to Congress under subsection (c) shall be considered to be*
24 *a certification for purposes of the higher simplified acquisi-*
25 *tion threshold under section 4A(b) of the Office of Federal*

1 *Procurement Policy Act, except that a certification under*
 2 *paragraph (1) of subsection (c) shall not constitute such a*
 3 *certification in the case of solicitations issued after the end*
 4 *of the five-year period beginning on the date of the enact-*
 5 *ment of the Federal Acquisition Improvement Act of 1994.*

6 “(e) *EXEMPTION FROM NOTICE PROVISIONS.—An*
 7 *agency is exempt from the requirements of section 18(a)(1)*
 8 *of the Office of Federal Procurement Policy Act (41 U.S.C.*
 9 *416(a)(1)) if the head of the agency makes the certification*
 10 *described in subsection (c)(1).*

11 “(f) *IMPLEMENTATION OF INTERIM FACNET CAPA-*
 12 *BILITY.—An agency shall be considered to have imple-*
 13 *mented an interim FACNET capability if (except in the*
 14 *case of contracting activities (or portions thereof) of the*
 15 *agency for which the head of the agency determines that*
 16 *implementation is not cost effective or practicable)—*

17 “(1) *with respect to each procurement expected to*
 18 *be in an amount greater than \$25,000, the agency has*
 19 *implemented the FACNET functions described in*
 20 *paragraphs (1)(A) and (2)(A) of section 29(b) of the*
 21 *Office of Federal Procurement Policy Act, as in effect*
 22 *on the effective date of section 4002 of the Federal Ac-*
 23 *quisition Improvement Act of 1994; and*

24 “(2) *with respect to each procurement expected to*
 25 *be in an amount greater than \$25,000, the agency is-*

1 *sues notices of solicitations through a system with*
2 *those functions for all contracting opportunities other*
3 *than in cases covered by section 18(c) of the Office of*
4 *Federal Procurement Policy Act (41 U.S.C. 416(c)).*

5 *“(g) IMPLEMENTATION OF FULL FACNET CAPABIL-*
6 *ITY.—(1) An agency shall be considered to have imple-*
7 *mented a full FACNET capability if (except in the case*
8 *of contracting activities (or portions thereof) of the agency*
9 *for which the head of the agency determines that implemen-*
10 *tation is not cost effective or practicable) the agency has*
11 *implemented all of the FACNET functions described in sec-*
12 *tion 29(b) of the Office of Federal Procurement Policy Act,*
13 *as in effect on the effective date of section 4002 of the Fed-*
14 *eral Acquisition Improvement Act of 1994.*

15 *“(2) For purposes of paragraph (1), an agency may*
16 *not be considered to have implemented a full FACNET ca-*
17 *pability if—*

18 *“(A) the head of the agency has determined that*
19 *implementation of FACNET capability is not cost ef-*
20 *fective or practicable in the case of certain contract-*
21 *ing activities (or portions thereof) of the agency; and*

22 *“(B) the percentage of the procurement actions*
23 *executed by those contracting activities (or portions*
24 *thereof) for the preceding fiscal year is greater than*

1 25 percent of the total number of procurement actions
2 executed by the agency for that year.

3 “(h) *CONTRACTING ACTIVITIES ORIGINALLY EX-*
4 *CLUDED IN CERTIFICATION.*—(1) *If the head of an agency,*
5 *in certifying under subsection (c) that the agency has im-*
6 *plemented an interim or a full FACNET capability, deter-*
7 *mines that such implementation is not cost effective or prac-*
8 *ticable in the case of any contracting activity (or portion*
9 *thereof) of that agency, then that certification shall not*
10 *apply under section 4A(b) of the Office of Federal Procure-*
11 *ment Policy Act to any procurement action by that con-*
12 *tracting activity (or portion thereof).*

13 “(2) *If the head of an agency determines that an in-*
14 *terim or a full FACNET capability has subsequently been*
15 *implemented for that contracting activity (or portion there-*
16 *of), the head of the agency shall make a certification to the*
17 *Administrator for Federal Procurement Policy in the same*
18 *manner as a certification under paragraph (1) or (2) of*
19 *subsection (c), as applicable, and such certification shall*
20 *have the same effect with respect to that contracting activity*
21 *(or portion thereof) as if made under such paragraph of*
22 *subsection (c).”.*

23 (b) *CLERICAL AMENDMENT.*—*The table of sections at*
24 *the beginning of chapter 137 of such title is amended by*

1 *inserting after the item relating to section 2302 the follow-*
 2 *ing new items:*

“2302a. Simplified acquisition threshold.

“2302b. Implementation of FACNET capability.”.

3 ***SEC. 4004. IMPLEMENTATION IN CIVILIAN AGENCIES.***

4 *Title III of the Federal Property and Administrative*
 5 *Services Act of 1949 is amended by inserting after section*
 6 *302 the following new sections:*

7 ***“SEC. 302A. SIMPLIFIED ACQUISITION THRESHOLD.***

8 *“(a) SIMPLIFIED ACQUISITION THRESHOLD.—For*
 9 *purposes of acquisitions by executive agencies, the sim-*
 10 *plified acquisition threshold is as specified in section 4A*
 11 *of the Office of Federal Procurement Policy Act, as in effect*
 12 *on the effective date of section 4001 of the Federal Acquisi-*
 13 *tion Improvement Act of 1994.*

14 ***“SEC. 302B. IMPLEMENTATION OF FACNET CAPABILITY.***

15 *“(a) IMPLEMENTATION OF FACNET CAPABILITY.—(1)*
 16 *The head of each executive agency shall implement the Fed-*
 17 *eral acquisition computer network (‘FACNET’) capability*
 18 *required by section 29 of the Office of Federal Procurement*
 19 *Policy Act.*

20 *“(2) In implementing the FACNET capability pursu-*
 21 *ant to paragraph (1), the head of an executive agency shall*
 22 *consult with the Administrator for Federal Procurement*
 23 *Policy.*

1 “(b) *DESIGNATION OF AGENCY OFFICIAL.*—The head
2 of each executive agency shall designate a program manager
3 to have responsibility for implementation of FACNET ca-
4 pability for that agency and otherwise to implement this
5 section.

6 “(c) *CERTIFICATION OF FACNET CAPABILITY.*—(1)
7 When the head of an executive agency, with the concurrence
8 of the Administrator for Federal Procurement Policy, deter-
9 mines that the agency has implemented an interim
10 FACNET capability (as defined in subsection (f)), the head
11 of the agency shall certify to Congress that the agency has
12 implemented an interim FACNET capability.

13 “(2) When the head of an executive agency, with the
14 concurrence of the Administrator for Federal Procurement
15 Policy, determines that the agency has implemented a full
16 FACNET capability (as defined in subsection (g)), the head
17 of the agency shall certify to Congress that the agency has
18 implemented a full FACNET capability.

19 “(3) The head of each executive agency shall provide
20 for implementation of both interim FACNET capability
21 and full FACNET capability, with priority on providing
22 convenient and universal user access as required by section
23 29(b)(3)(C) of the Office of Federal Procurement Policy Act,
24 in that agency as soon as practicable after the date of the

1 *enactment of the Federal Acquisition Improvement Act of*
2 *1994.*

3 “(d) *HIGHER SIMPLIFIED ACQUISITION THRESHOLD*
4 *WHEN FACNET CAPABILITY CERTIFIED.*—A certification
5 *to Congress under subsection (c) shall be considered to be*
6 *a certification for purposes of the higher simplified acquisi-*
7 *tion threshold under section 4A(b) of the Office of Federal*
8 *Procurement Policy Act, except that a certification under*
9 *paragraph (1) of subsection (c) shall not constitute such a*
10 *certification in the case of solicitations issued after the end*
11 *of the five-year period beginning on the date of the enact-*
12 *ment of the Federal Acquisition Improvement Act of 1994.*

13 “(e) *EXEMPTION FROM NOTICE PROVISIONS.*—An ex-
14 *ecutive agency is exempt from the requirements of section*
15 *18(a)(1) of the Office of Federal Procurement Policy Act*
16 *(41 U.S.C. 416(a)(1)) if the head of the agency makes the*
17 *certification described in subsection (c)(1).*

18 “(f) *IMPLEMENTATION OF INTERIM FACNET CAPA-*
19 *BILITY.*—An executive agency shall be considered to have
20 *implemented an interim FACNET capability if (except in*
21 *the case of contracting activities (or portions thereof) of the*
22 *agency for which the head of the agency determines that*
23 *implementation is not cost effective or practicable)—*

24 “(1) *with respect to each procurement expected to*
25 *be in an amount greater than \$25,000, the executive*

1 agency has implemented the FACNET functions de-
2 scribed in paragraphs (1)(A) and (2)(A) of section
3 29(b) of the Office of Federal Procurement Policy Act,
4 as in effect on the effective date of section 4002 of the
5 Federal Acquisition Improvement Act of 1994; and

6 “(2) with respect to each procurement expected to
7 be in an amount greater than \$25,000, the executive
8 agency issues notices of solicitations through a system
9 with those functions for all contracting opportunities
10 other than in cases covered by section 18(c) of the Of-
11 fice of Federal Procurement Policy Act (41 U.S.C.
12 416(c)).

13 “(g) IMPLEMENTATION OF FULL FACNET CAPABIL-
14 ITY.—(1) An executive agency shall be considered to have
15 implemented a full FACNET capability if (except in the
16 case of contracting activities (or portions thereof) of the
17 agency for which the head of the agency determines that
18 implementation is not cost effective or practicable) the exec-
19 utive agency has implemented all of the FACNET functions
20 described in section 29(b) of the Office of Federal Procure-
21 ment Policy Act, as in effect on the effective date of section
22 4002 of the Federal Acquisition Improvement Act of 1994.

23 “(2) For purposes of paragraph (1), an executive agen-
24 cy may not be considered to have implemented a full
25 FACNET capability if—

1 “(A) the head of the agency has determined that
2 implementation of FACNET capability is not cost ef-
3 fective or practicable in the case of certain contract-
4 ing activities (or portions thereof) of the agency; and

5 “(B) the percentage of the procurement actions
6 executed by those contracting activities (or portions
7 thereof) for the preceding fiscal year is greater than
8 25 percent of the total number of procurement actions
9 executed by the agency for that year.

10 “(h) CONTRACTING ACTIVITIES ORIGINALLY EX-
11 CLUDED IN CERTIFICATION.—(1) If the head of an executive
12 agency, in certifying under subsection (c) that the agency
13 has implemented an interim or a full FACNET capability,
14 determines that such implementation is not cost effective
15 or practicable in the case of any contracting activity (or
16 portion thereof) of that agency, then that certification shall
17 not apply under section 4A(b) of the Office of Federal Pro-
18 curement Policy Act to any procurement action by that con-
19 tracting activity (or portion thereof).

20 “(2) If the head of an executive agency determines that
21 an interim or a full FACNET capability has subsequently
22 been implemented for that contracting activity (or portion
23 thereof), the head of the agency shall make a certification
24 to Administrator for Federal Procurement Policy in the
25 same manner as a certification under paragraph (1) or (2)

1 *of subsection (c), as applicable, and such certification shall*
 2 *have the same effect with respect to that contracting activity*
 3 *(or portion thereof) as if made under such paragraph of*
 4 *subsection (c).”.*

5 ***PART II—SIMPLIFICATION OF PROCEDURES***

6 ***SEC. 4011. SMALL BUSINESS PROVISIONS.***

7 (a) *INTERIM REPORTING RULE.*—Notwithstanding
 8 *section 4A of the Office of Federal Procurement Policy Act,*
 9 *as added by section 4001, during the 5-year period begin-*
 10 *ning on the date of the issuance in final form of revisions*
 11 *to the Federal Acquisition Regulation under section 4B of*
 12 *the Office of Federal Procurement Policy Act, as added by*
 13 *section 4012, contracting activities shall continue to report,*
 14 *pursuant to section 19(d) of the Office of Federal Procure-*
 15 *ment Policy Act (41 U.S.C. 417(d)), procurement awards*
 16 *with a dollar value of at least \$25,000, but less than*
 17 *\$100,000, in conformity with the procedures for the report-*
 18 *ing of a contract award in excess of \$25,000 in effect on*
 19 *November 18, 1993.*

20 (b) *FUNCTIONS OF ADMINISTRATOR FOR FEDERAL*
 21 *PROCUREMENT POLICY.*—Section 6(d) of the Office of Fed-
 22 *eral Procurement Policy Act (41 U.S.C. 405(d)) is amend-*
 23 *ed—*

24 (1) *in paragraph (7), by striking out “and”*
 25 *after the semicolon at the end; and*

1 (2) by redesignating paragraph (8) as para-
 2 graph (10) and inserting after paragraph (7) the fol-
 3 lowing:

4 “(8) developing policies, in consultation with the
 5 Administrator of the Small Business Administration,
 6 that ensure that small businesses and small businesses
 7 owned and controlled by socially and economically
 8 disadvantaged persons are provided with the maxi-
 9 mum practicable opportunities to participate in pro-
 10 curements that are conducted for amounts below the
 11 simplified acquisition threshold;

12 “(9) developing policies that will promote
 13 achievement of goals for participation by small busi-
 14 nesses and small businesses owned and controlled by
 15 socially and economically disadvantaged individ-
 16 uals;”.

17 **SEC. 4012. PROCEDURES FOR PURCHASES BELOW MICRO-**
 18 **PURCHASE THRESHOLD.**

19 The Office of Federal Procurement Policy Act (41
 20 U.S.C. 401 et seq.) is amended by inserting after section
 21 4A, as added by section 4001, the following new section:

22 **“SEC. 4B. PROCEDURES APPLICABLE TO PURCHASES**
 23 **BELOW MICRO-PURCHASE THRESHOLD.**

24 “(a) *REQUIREMENTS.*—(1) The head of each executive
 25 agency shall ensure that contracting activities of that agen-

1 *cy, in awarding a contract with a price exceeding the*
2 *micro-purchase threshold, comply with the requirements of*
3 *section 8(a) of the Small Business Act (15 U.S.C. 637(a))*
4 *and section 2323 of title 10, United States Code, or section*
5 *316 of the Federal Property and Administrative Services*
6 *Act of 1949, as applicable to that agency.*

7 “(2) The authority under part 13.106(a)(1) of the Fed-
8 *eral Acquisition Regulation (48 C.F.R. 13.106(a)(1)), as in*
9 *effect on November 18, 1993, to make purchases without se-*
10 *curing competitive quotations does not apply to any pur-*
11 *chases with a price exceeding the micro-purchase threshold.*

12 “(3) The head of each executive agency shall ensure
13 *that contracting activities of that agency comply with the*
14 *requirements of section 15(j) of the Small Business Act (15*
15 *U.S.C. 644(j)), relating to the small business reserve.*

16 “(b) *EXCLUSIONS FOR MICRO-PURCHASES.—A pur-*
17 *chase by an executive agency with an anticipated value of*
18 *the micro-purchase threshold or less is not subject to the*
19 *Act of March 3, 1933, commonly referred to as the ‘Buy*
20 *American Act’ (41 U.S.C. 10a–10c).*

21 “(c) *CERTAIN CONTRACTING OFFICIALS NOT TO BE*
22 *CONSIDERED PROCUREMENT OFFICIALS.—Any civilian of-*
23 *ficer or employee, and any member of the Armed Forces,*
24 *who has authority to enter into contracts but whose con-*
25 *tracting authority is limited to the amount of the micro-*

1 *purchase threshold or less is not a procurement official as*
 2 *defined in paragraph (3)(A) of section 27(p) of the Office*
 3 *of Federal Procurement Policy Act (41 U.S.C. 423(p)).*

4 “(d) *IMPLEMENTATION THROUGH FAR.*—The provi-
 5 *sions of subsections (a), (b), and (c) shall be implemented*
 6 *through the Federal Acquisition Regulation.*

7 “(e) *MICRO-PURCHASE THRESHOLD DEFINED.*—For
 8 *purposes of this subsection, the micro-purchase threshold is*
 9 *the amount of \$2,500, adjusted on October 1 of each year*
 10 *divisible by 5 to the equivalent amount in constant fiscal*
 11 *year 1993 dollars (rounded to the nearest \$100).”.*

12 **SEC. 4013. PROCUREMENT NOTICE.**

13 (a) *CONTINUATION OF EXISTING NOTICE THRESH-*
 14 *OLDS.*—Subsection (a) of section 18 of the Office of Federal
 15 *Procurement Policy Act (41 U.S.C. 416) is amended as fol-*
 16 *lows:*

17 (1) *Paragraph (1) is amended—*

18 (A) *by striking out “the small purchase*
 19 *threshold” each place it appears and inserting in*
 20 *lieu thereof “the simplified acquisition thresh-*
 21 *old”;*

22 (B) *by striking out “(c)—” in the matter*
 23 *preceding subparagraph (A) and inserting in*
 24 *lieu thereof “(c):”;*

1 (C) by striking out “an executive” at the be-
2 ginning of subparagraphs (A) and (C) and in-
3 serting in lieu thereof “An executive”;

4 (D) by striking out the semicolon at the end
5 of subparagraph (A) and inserting in lieu thereof
6 a period; and

7 (E) by amending subparagraph (B) to read
8 as follows:

9 “(B) An executive agency intending to solicit
10 bids or proposals for a contract for property or serv-
11 ices for a price expected to exceed \$10,000 but not to
12 exceed the simplified acquisition threshold shall post
13 a notice of solicitation described in subsection (b).
14 The notice shall be posted at the contracting office is-
15 suing the solicitation or shall be made available
16 through an electronic system with a FACNET capa-
17 bility that at least meets the requirements of para-
18 graphs (1)(A) and (2)(A) of section 29(b). The notice
19 shall be posted for a period of not less than 10 days,
20 except that in the case of a posting made through an
21 electronic system with such a FACNET capability,
22 the posting may be for a period of less than 10 days
23 as prescribed in the Federal Acquisition Regulation.”.

24 (2) Paragraph (3)(B) is amended by inserting
25 after “(B)” the following: “in the case of a contract

1 or order for an amount expected to exceed the sim-
2 plified acquisition threshold.”.

3 (b) *OPPORTUNITY FOR ALL RESPONSIBLE POTENTIAL*
4 *OFFERORS.*—Such subsection is further amended by adding
5 at the end the following:

6 “(4) An executive agency intending to solicit offers for
7 a contract for which a notice of solicitation is required to
8 be posted under paragraph (1)(B) shall ensure that all po-
9 tential offerors are permitted to respond to the solicitation
10 for the contract within the period of time specified in the
11 solicitation for the submission of offers.”.

12 (c) *ESTABLISHMENT OF DEADLINE FOR SUBMISSION*
13 *OF OFFERS.*—Such subsection is further amended by insert-
14 ing after paragraph (4), as added by subsection (b), the fol-
15 lowing new paragraph:

16 “(5) An executive agency shall establish a deadline for
17 the submission of all bids or proposals in response to a no-
18 tice of solicitation with respect to which no such deadline
19 is provided by statute.”.

20 (d) *EXCEPTIONS.*—Subsection (c) of such section is
21 amended by adding at the end the following new paragraph:

22 “(4)(A) The requirements of subsection (a)(1) shall not
23 apply in the case of an acquisition accomplished through
24 the use of an electronic system with a FACNET capability,
25 as described in section 29 and certified under section 2302a

1 of title 10, United States Code, or section 302A of the Fed-
 2 eral Property and Administrative Services Act of 1949.

3 “(B) The Federal Acquisition Regulation shall provide
 4 for minimum periods of time for submission of offers for
 5 acquisitions described in subparagraph (A). Such periods
 6 shall provide offerors a reasonable opportunity to respond.

7 “(C) A notice of solicitation of bids or proposals for
 8 an acquisition described in subparagraph (A) shall include
 9 the matter described in under subsection (b).”.

10 **SEC. 4014. GAO TEST AND REPORT ON PERFORMANCE OF**
 11 **SIMPLIFIED ACQUISITION THRESHOLD.**

12 (a) *PERFORMANCE TEST.*—The Comptroller General of
 13 the United States shall collect data and assess the effects
 14 of the simplified acquisition threshold, as established in sec-
 15 tion 4A of the Office of Federal Procurement Policy Act,
 16 on the participation of small business concerns (including
 17 small business concerns owned and controlled by socially
 18 and economically disadvantaged individuals) in procure-
 19 ment awards of less than \$100,000 and the benefits and
 20 detriments, if any, to the buying activities of the various
 21 Executive agencies.

22 (b) *DATA TO BE COLLECTED.*—Data collected under
 23 subsection (a) shall include data regarding whether the es-
 24 tablishment of the simplified acquisition threshold has im-
 25 proved the acquisition process in terms of reduced paper-

1 work, financial or other savings to the Federal Government,
 2 and any increase in the number of contractors participat-
 3 ing in the contracting process.

4 (c) *PERIOD*.—Data shall be collected for purposes of
 5 subsection (a) during the period beginning with the first
 6 full fiscal year quarter after the effective date of the amend-
 7 ments made by section 4001 and ending on September 30,
 8 1997.

9 (d) *REPORT*.—By March 1, 1998, the Comptroller
 10 General shall submit to Congress a report on the effects of
 11 the establishment of the simplified acquisition threshold by
 12 the amendments made by section 4001.

13 **PART III—INAPPLICABILITY OF LAWS TO ACQUI-**
 14 **SITIONS NOT IN EXCESS OF SIMPLIFIED AC-**
 15 **QUISITION THRESHOLD**

16 **Subpart A—Generally**

17 **SEC. 4021. INAPPLICABILITY OF FUTURE ENACTED PRO-**
 18 **CUREMENT LAWS TO CONTRACTS NOT EX-**
 19 **CEEDING THE SIMPLIFIED ACQUISITION**
 20 **THRESHOLD.**

21 (a) *ARMED SERVICES*.—Section 2302a of title 10,
 22 United States Code, as added by section 4003(a), is amend-
 23 ed by adding at the end the following new subsection:

24 “(b) *CONSTRUCTION WITH FUTURE ENACTMENTS*.—A
 25 provision of law enacted after the date of the enactment of

1 *the Federal Acquisition Improvement Act of 1994 shall not*
2 *be construed as applicable to purchases of property or serv-*
3 *ices by an agency named in section 2303 of this title for*
4 *an amount not in excess of the simplified acquisition*
5 *threshold unless that provision of law specifically refers to*
6 *this section and specifically states that such provision of*
7 *law modifies or supersedes this section.”.*

8 **(b) AGENCIES.**—*Section 302A of the Federal Property*
9 *and Administrative Services Act of 1949, as added by sec-*
10 *tion 4004(a), is amended by adding at the end the following*
11 *new subsection:*

12 **“(b) CONSTRUCTION WITH FUTURE ENACTMENTS.**—*A*
13 *provision of law enacted after the date of the enactment of*
14 *the Federal Acquisition Improvement Act of 1994 shall not*
15 *be construed as applicable to purchases of property or serv-*
16 *ices by an executive agency for an amount not in excess*
17 *of the simplified acquisition threshold unless that provision*
18 *of law specifically refers to this section and specifically*
19 *states that such provision of law modifies or supersedes this*
20 *section.”.*

1 **Subpart B—Armed Services Acquisitions**

2 **SEC. 4031. INAPPLICABILITY OF CERTAIN PROVISIONS OF**
3 **LAW.**

4 *Section 2302a of title 10, United States Code, as*
5 *amended by section 4021, is further amended by adding at*
6 *the end the following new subsection:*

7 “(c) *INAPPLICABILITY OF CERTAIN PROVISIONS OF*
8 *LAW.—The following provisions of law (and regulations*
9 *prescribed under such provisions) shall not apply to any*
10 *contract entered into by the Department of Defense in an*
11 *amount not greater than the simplified acquisition thresh-*
12 *old:*

13 “(1) *Section 2306(b) of this title (relating to pro-*
14 *hibition on contingent fees).*

15 “(2) *Section 2313 of this title (relating to exam-*
16 *ination of books and records of contractor).*

17 “(3) *Section 2384(b) of this title (relating to re-*
18 *quirement to identify suppliers and sources of sup-*
19 *plies).*

20 “(4) *Section 2393(d) of this title (relating to*
21 *prohibition against doing business with certain*
22 *offerors of contractors).*

23 “(5) *Section 2402 of this title (relating to prohi-*
24 *bition on limitation of subcontractor direct sales).*

1 “(6) Section 2408(a) of this title (relating to
2 prohibition on persons convicted of defense-contract
3 related felonies).

4 “(7) Section 2410b of this title (relating to con-
5 tractor inventory accounting system standards).

6 “(8) Section 2534 of this title (relating to mis-
7 cellaneous limitations on procurement of goods other
8 than American goods).

9 “(9) Section 27(e) of the Office of Federal Pro-
10 curement Policy Act (41 U.S.C. 423(e)).

11 “(10) The Drug-Free Workplace Act of 1988
12 (subtitle D of title V of Public Law 100–690; 41
13 U.S.C. 701 et seq.).”.

14 **SEC. 4032. CONFORMING AMENDMENTS RELATING TO INAP-**
15 **PLICABILITY OF CERTAIN PROVISIONS OF**
16 **LAW.**

17 (a) *INAPPLICABILITY OF REQUIREMENT FOR CON-*
18 *TRACT CLAUSE REGARDING CONTINGENT FEES.*—Section
19 2306(b) of title 10, United States Code, is amended by add-
20 ing at the end the following: “This subsection does not apply
21 to a contract that is for an amount not in excess of the
22 simplified acquisition threshold.”.

23 (b) *INAPPLICABILITY OF AUTHORITY TO EXAMINE*
24 *BOOKS AND RECORDS OF CONTRACTORS.*—Section 2313 of
25 title 10, United States Code, as amended by section 2201,

1 *is further amended by adding at the end of subsection (f)*
2 *the following:*

3 “(2) A contract that is for an amount not in ex-
4 cess of the simplified acquisition threshold.”.

5 (c) *INAPPLICABILITY OF REQUIREMENT TO IDENTIFY*
6 *SUPPLIERS AND SOURCES OF SUPPLIES.*—Section 2384(b)
7 *of title 10, United States Code, is amended by adding at*
8 *the end the following new paragraph:*

9 “(3) The regulations prescribed pursuant to paragraph
10 (1) do not apply to a contract for an amount that does
11 not exceed the simplified acquisition threshold.”.

12 (d) *INAPPLICABILITY OF PROHIBITION AGAINST DOING*
13 *BUSINESS WITH CERTAIN OFFERORS OR CONTRACTORS.*—
14 *Section 2393(d) of title 10, United States Code, is amended*
15 *in the second sentence by striking out “above” and all that*
16 *follows and inserting in lieu thereof “in excess of the sim-*
17 *plified acquisition threshold.”.*

18 (e) *INAPPLICABILITY OF PROHIBITION ON LIMITING*
19 *SUBCONTRACTOR DIRECT SALES TO THE UNITED*
20 *STATES.*—Section 2402 of title 10, United States Code, is
21 *amended by adding at the end the following new subsection:*

22 “(c) This section does not apply to a contract that is
23 for an amount not in excess of the simplified acquisition
24 threshold.”.

1 (f) *INAPPLICABILITY OF PROHIBITION ON PERSONS*
2 *CONVICTED OF DEFENSE-RELATED FELONIES.*—Section
3 2408(a) of title 10, United States Code, is amended by add-
4 ing at the end the following new paragraph:

5 “(4) In this subsection, the term ‘defense contract’
6 means a contract in an amount in excess of the simplified
7 acquisition threshold.”.

8 (g) *INAPPLICABILITY OF CONTRACTOR INVENTORY AC-*
9 *COUNTING SYSTEM STANDARDS.*—Section 2410b of title 10,
10 United States Code, is amended—

11 (1) by inserting “(a)” before “The Secretary”;
12 and

13 (2) by adding at the end the following:

14 “(b) The regulations prescribed pursuant to subsection
15 (a) shall not apply to a contract that is for an amount
16 not in excess of the simplified acquisition threshold.”.

17 (h) *INAPPLICABILITY OF MISCELLANEOUS PROCURE-*
18 *MENT LIMITATIONS.*—Section 2534 of title 10, United
19 States Code, is amended by adding at the end the following:

20 “(g) *INAPPLICABILITY TO CONTRACTS UNDER SIM-*
21 *PLIFIED ACQUISITION THRESHOLD.*—This section does not
22 apply to a contract for an amount that does not exceed the
23 simplified acquisition threshold.”.

1 **Subpart C—Civilian Agency Acquisitions**

2 **SEC. 4041. INAPPLICABILITY OF CERTAIN PROVISIONS OF**
3 **LAW.**

4 *Section 302A of the Federal Property and Administra-*
5 *tive Services Act of 1949, as amended by section 4021(b),*
6 *is further amended by adding at the end the following new*
7 *subsection:*

8 “(c) *INAPPLICABILITY OF CERTAIN PROVISIONS OF*
9 *LAW.—The following provisions of law (and regulations*
10 *prescribed under such provisions) shall not apply to any*
11 *contract entered into by an executive agency in an amount*
12 *not greater than the simplified acquisition threshold:*

13 “(1) *Sections 303G, 304(a), and 304C of this*
14 *Act.*

15 “(2) *Section 27(e) of the Office of Federal Pro-*
16 *curement Policy Act (41 U.S.C. 423(e)).*

17 “(3) *The Drug-Free Workplace Act of 1988 (sub-*
18 *title D of title V of Public Law 100–690; 41 U.S.C.*
19 *701 et seq.).”.*

20 **SEC. 4042. CONFORMING AMENDMENTS RELATING TO INAP-**
21 **PLICABILITY OF CERTAIN PROVISIONS OF**
22 **LAW.**

23 (a) *INAPPLICABILITY OF PROHIBITION ON LIMITING*
24 *SUBCONTRACTOR DIRECT SALES TO THE UNITED*
25 *STATES.—Section 303G of the Federal Property and Ad-*

1 *ministrative Services Act of 1949 (41 U.S.C. 253g) is*
 2 *amended by adding at the end the following new subsection:*

3 “(c) *This section does not apply to a contract for an*
 4 *amount that is not in excess of the simplified acquisition*
 5 *threshold.”.*

6 (b) *INAPPLICABILITY OF REQUIREMENT FOR CON-*
 7 *TRACT CLAUSE REGARDING CONTINGENT FEES.—Section*
 8 *304(a) of the Federal Property and Administrative Services*
 9 *Act of 1949 (41 U.S.C. 254(a)) is amended by adding at*
 10 *the end the following: “The preceding sentence does not*
 11 *apply to a contract for an amount that is not in excess*
 12 *of the simplified acquisition threshold.”.*

13 (c) *INAPPLICABILITY OF AUTHORITY TO EXAMINE*
 14 *BOOKS AND RECORDS OF CONTRACTORS.—Section 304C of*
 15 *the Federal Property and Administrative Services Act of*
 16 *1949, as added by section 2251(a), is amended by adding*
 17 *at the end of subsection (e) the following:*

18 “(2) *A contract that is for an amount not in ex-*
 19 *cess of the simplified acquisition threshold.”.*

20 **Subpart D—Acquisitions Generally**

21 **SEC. 4051. CONFORMANCE OF CERTAIN PROCUREMENT IN-**
 22 **TEGRITY REQUIREMENTS.**

23 *Subsection (e)(7)(A) of section 27 of the Office of Fed-*
 24 *eral Procurement Policy Act (41 U.S.C. 423) is amended*

1 *by inserting after “\$100,000” the following: “or the sim-*
 2 *plified acquisition threshold, whichever is greater”.*

3 **SEC. 4052. INAPPLICABILITY OF THE DRUG-FREE WORK-**
 4 **PLACE ACT OF 1988.**

5 *Section 5152(a)(1) of the Drug-Free Workplace Act of*
 6 *1988 (subtitle D of title V of the Anti-Drug Abuse Act of*
 7 *1988; Public Law 100–690; 41 U.S.C. 701(a)(1)) is amend-*
 8 *ed by striking out “of \$25,000 or more from any Federal*
 9 *agency” and inserting in lieu thereof “in excess of the sim-*
 10 *plified acquisition threshold (as defined in section 4A of*
 11 *such Act) by any Federal agency”.*

12 **PART IV—CONFORMING AMENDMENTS**

13 **SEC. 4071. ARMED SERVICES ACQUISITIONS.**

14 *(a) SIMPLIFIED ACQUISITION PROCEDURES.—Section*
 15 *2304(g) of title 10, United States Code, is amended—*

16 *(1) in paragraph (1), by striking out “small*
 17 *purchases of property and services” and inserting in*
 18 *lieu thereof “purchases of property and services for*
 19 *amounts not in excess of the simplified acquisition*
 20 *threshold”;*

21 *(2) by striking out paragraph (2);*

22 *(3) by redesignating paragraphs (3) and (4) as*
 23 *paragraphs (2) and (3), respectively;*

24 *(4) in paragraph (2), as so redesignated—*

1 (A) by striking out “small purchase thresh-
2 old” and inserting in lieu thereof “simplified ac-
3 quisition threshold”; and

4 (B) by striking out “small purchase proce-
5 dures” and inserting in lieu thereof “simplified
6 procedures”; and

7 (5) in paragraph (3), as so redesignated, by
8 striking out “small purchase procedures” and insert-
9 ing in lieu thereof “simplified procedures”.

10 (b) *SOLICITATION CONTENT REQUIREMENT*.—Section
11 2305(a)(2) of such title is amended by striking out “small
12 purchases)” in the matter preceding subparagraph (A) and
13 inserting in lieu thereof “a purchase for an amount not in
14 excess of the simplified acquisition threshold)”.

15 (c) *COST TYPE CONTRACTS*.—Section 2306(e)(2)(A) of
16 such title is amended by striking out “small purchase
17 threshold” and inserting in lieu thereof “simplified acqui-
18 sition threshold”.

19 **SEC. 4072. CIVILIAN AGENCY ACQUISITIONS.**

20 (a) *SIMPLIFIED ACQUISITION PROCEDURES*.—Section
21 303(g) of the Federal Property and Administrative Services
22 Act of 1949 (41 U.S.C. 253(g)) is amended—

23 (1) in paragraph (1), by striking out “small
24 purchases of property and services” and inserting in
25 lieu thereof “purchases of property and services for

1 *amounts not in excess of the simplified acquisition*
 2 *threshold”;*

3 *(2) by striking out paragraph (2);*

4 *(3) by redesignating paragraphs (3) and (4) as*
 5 *paragraphs (2) and (3), respectively;*

6 *(4) in paragraph (2), as so redesignated—*

7 *(A) by striking out “small purchase thresh-*
 8 *old” and inserting in lieu thereof “simplified ac-*
 9 *quisition threshold”; and*

10 *(B) by striking out “small purchase proce-*
 11 *dures” and inserting in lieu thereof “simplified*
 12 *procedures”;*

13 *(5) in paragraph (3), as so redesignated, by*
 14 *striking out “small purchase procedures” and insert-*
 15 *ing in lieu thereof “the simplified procedures”; and*

16 *(6) by striking out paragraph (5) and inserting*
 17 *in lieu thereof the following:*

18 *“(4) In this subsection, the term ‘simplified acquisition*
 19 *threshold’ has the meaning given such term in section 4A*
 20 *of the Office of Federal Procurement Policy Act.”.*

21 *(b) SOLICITATION CONTENT REQUIREMENT.—Section*
 22 *303A(b) of such Act (41 U.S.C. 253a(b)) is amended by*
 23 *striking out “small purchases)” in the matter preceding*
 24 *paragraph (1) and inserting in lieu thereof “a purchase for*

1 *an amount not in excess of the simplified acquisition*
2 *threshold)*".

3 (c) *COST TYPE CONTRACTS.*—Section 304(b) of such
4 Act (41 U.S.C. 254(b)) is amended in the third sentence
5 by striking out "either \$25,000" and inserting in lieu there-
6 of "either the simplified acquisition threshold".

7 **SEC. 4073. OFFICE OF FEDERAL PROCUREMENT POLICY**
8 **ACT.**

9 Section 19(a) of the Office of Federal Procurement Pol-
10 icy Act (41 U.S.C. 417(a)) is amended by striking out "pro-
11 curements, other than small purchases," and inserting in
12 lieu thereof "procurements for amounts in excess of the sim-
13 plified acquisition threshold".

14 **PART V—REVISION OF REGULATIONS**

15 **SEC. 4081. REVISION REQUIRED.**

16 (a) *FEDERAL ACQUISITION REGULATION.*—(1) Not
17 later than one year after the date of the enactment of this
18 Act, the Federal Acquisition Regulatory Council established
19 by section 25(a) of the Office of Federal Procurement Policy
20 Act (41 U.S.C. 421(a)) shall—

21 (A) review the Federal Acquisition Regulation to
22 identify regulations that are applicable to acquisi-
23 tions in excess of a specified amount that is less than
24 \$100,000; and

1 (B) amend the regulations so identified as nec-
2 essary to provide that such regulations do not apply
3 to acquisitions that are not in excess of the simplified
4 acquisition threshold.

5 (2) Paragraph (1) does not apply in the case of a regu-
6 lation for which such an amendment would not be in the
7 national interest, as determined by the Council.

8 (b) SUPPLEMENTAL REGULATIONS.—Not later than 90
9 days after the date on which the review required by sub-
10 section (a) is completed, the head of each Federal agency
11 that has issued regulations, policies, or procedures referred
12 to in section 25(c)(2) of the Office of Federal Procurement
13 Policy Act (41 U.S.C. 421(c)(2)) shall—

14 (1) identify any such regulation, policy, or pro-
15 cedure that is applicable to acquisitions in excess of
16 a specified amount that is less than \$100,000; and

17 (2) pursuant to section 22 of such Act (41 U.S.C.
18 418b), publish amendments to the regulations so iden-
19 tified as necessary to provide that such regulations,
20 policies, and procedures do not apply to acquisitions
21 that are not in excess of the simplified acquisition
22 threshold.

23 (c) DEFINITIONS.—In this section:

24 (1) The term “simplified acquisition threshold”
25 has the meaning given such term in section 4A of the

1 *Office of Federal Procurement Policy Act, as added by*
2 *section 4001.*

3 (2) *The term “Federal agency” has the meaning*
4 *given such term in section 3(b) of the Federal Prop-*
5 *erty and Administrative Services Act of 1949 (41*
6 *U.S.C. 472(b)).*

7 ***Subtitle B—Socioeconomic and***
8 ***Small Business Laws***

9 ***SEC. 4101. PAYMENT PROTECTIONS FOR SUBCONTRACTORS***
10 ***AND SUPPLIERS.***

11 (a) *REGULATIONS.—*

12 (1) *IN GENERAL.—The Administrator for Fed-*
13 *eral Procurement Policy shall prescribe in regulations*
14 *the requirements described in paragraph (2).*

15 (2) *PROCEDURES RELATING TO COMPLIANCE*
16 *WITH PAYMENT TERMS.—(A) Under procedures estab-*
17 *lished in the regulations, upon the assertion by a sub-*
18 *contractor or supplier of a contractor performing a*
19 *Government contract that the subcontractor or sup-*
20 *plier has not been paid by the prime contractor in ac-*
21 *cordance with the payment terms of the subcontract,*
22 *purchase order, or other agreement with the prime*
23 *contractor, the contracting officer may determine the*
24 *following:*

1 (i) *With respect to a construction contract,*
2 *whether the contractor has made progress pay-*
3 *ments to the subcontractor or supplier in compli-*
4 *ance with chapter 39 of title 31, United States*
5 *Code.*

6 (ii) *With respect to a contract other than a*
7 *construction contract, whether the contractor has*
8 *made progress or other payments to the sub-*
9 *contractor or supplier in compliance with the*
10 *terms of the subcontract, purchase order, or other*
11 *agreement with the prime contractor.*

12 (iii) *With respect to either a construction*
13 *contract or a contract other than a construction*
14 *contract, whether the contractor has made final*
15 *payment to the subcontractor or supplier in com-*
16 *pliance with the terms of the subcontract, pur-*
17 *chase order, or other agreement with the prime*
18 *contractor.*

19 (iv) *With respect to either a construction*
20 *contract or a contract other than a construction*
21 *contract, whether any certification of payment of*
22 *the subcontractor or supplier accompanying the*
23 *contractor's payment request to the Government*
24 *is accurate.*

1 (B) If the contracting officer determines that the
2 prime contractor is not in compliance with any mat-
3 ter referred to in clause (i), (ii), or (iii) of subpara-
4 graph (A), the contracting officer may, under proce-
5 dures established in the regulations—

6 (i) encourage the prime contractor to make
7 timely payment to the subcontractor or supplier;
8 or

9 (ii) reduce or suspend progress payments
10 with respect to amounts due to the prime con-
11 tractor.

12 (C) If the contracting officer determines that a
13 certification referred to in clause (iv) of subparagraph
14 (A) is inaccurate in any material respect, the con-
15 tracting officer shall, under procedures established in
16 the regulations, initiate appropriate administrative
17 or other remedial action.

18 (D) This paragraph shall apply with respect to
19 any Government contract, other than a Department of
20 Defense contract, that is in effect on the date of pro-
21 mulgation of the regulations under this subsection or
22 that is awarded after such date.

23 (b) *INAPPLICABILITY TO CERTAIN CONTRACTS.*—The
24 regulations prescribed under this section shall not apply to
25 the following contracts:

1 (1) A contract that is for an amount not in ex-
2 cess of the simplified acquisition threshold (within the
3 meaning of section 4A of the Office of Federal Pro-
4 curement Policy Act).

5 (2) A contract for the acquisition of commercial
6 items (as that term is defined in section 315 of the
7 Federal Property and Administrative Services Act of
8 1949).

9 (c) REGULATIONS DEADLINES.—(1) The Adminis-
10 trator for Federal Procurement Policy shall publish pro-
11 posed regulations under subsection (a) not later than 180
12 days after the date of the enactment of this Act.

13 (2) The Administrator shall publish final regulations
14 under subsection (a) not later than 270 days after the date
15 of the enactment of this Act.

16 (d) AMENDMENTS TO ARMED SERVICES PROVISION.—
17 Section 806 of the National Defense Authorization Act for
18 Fiscal Years 1992 and 1993 (Public Law 102–190; 10
19 U.S.C. 2301 note) is amended by striking out subsection
20 (c) and inserting in lieu thereof the following:

21 “(c) INAPPLICABILITY TO CERTAIN CONTRACTS.—The
22 regulations prescribed under this section shall not apply to
23 the following contracts:

24 “(1) A contract that is for an amount not in ex-
25 cess of the simplified acquisition threshold (within the

1 *meaning of section 4A of the Office of Federal Pro-*
2 *curement Policy Act).*

3 *“(2) A contract for the acquisition of commercial*
4 *items (as that term is defined in section 2281 of title*
5 *10, United States Code).”.*

6 **SEC. 4102. SMALL BUSINESS PROCUREMENT ADVISORY**
7 **COUNCIL.**

8 *(a) ESTABLISHMENT.—There is hereby established an*
9 *interagency council to be known as the “Small Business*
10 *Procurement Advisory Council” (hereinafter in this section*
11 *referred to as the “Council”).*

12 *(b) DUTIES.—The duties of the Council are—*

13 *(1) to serve as a forum for discussion of issues*
14 *and problems relating to, and ideas for improvement*
15 *of, small business procurement matters within the*
16 *Federal Government;*

17 *(2) to provide information to other departments*
18 *and agencies of the Federal Government about small*
19 *business procurement; and*

20 *(3) to issue advisory reports to the Small Busi-*
21 *ness Administration and the Office of Federal Pro-*
22 *curement Policy on small business procurement mat-*
23 *ters.*

24 *(c) MEMBERSHIP.—The Council shall be composed of*
25 *the following members:*

1 (1) *The Administrator of the Small Business Ad-*
2 *ministration (or the designee of the Administrator).*

3 (2) *The Administrator for Federal Procurement*
4 *Policy (or the designee of the Administrator).*

5 (3) *The Director of the Minority Business Devel-*
6 *opment Agency.*

7 (4) *The head of each Office of Small and Dis-*
8 *advantaged Business Utilization in each Federal*
9 *agency having procurement powers.*

10 (d) *CO-CHAIRMEN.—The Council shall be co-chaired*
11 *by the Administrator of the Small Business Administration*
12 *and the Administrator for Federal Procurement Policy.*

13 (e) *MEETINGS.—The Council shall meet at the call of*
14 *the chairmen, but not less often than four times a year and*
15 *once each quarter.*

16 (f) *DIRECTOR.—The Chief Counsel for Advocacy of the*
17 *Small Business shall serve as the director of the Council.*
18 *The director may not vote on matters before the council ex-*
19 *cept in the case of a tie vote among the members. The duties*
20 *of the director shall be determined by the chairmen of the*
21 *Council. The Chief Counsel for Advocacy shall receive no*
22 *additional pay by reason of the counsel's service as director*
23 *of the Council.*

24 (g) *ANNUAL REPORT.—Not later than 30 days after*
25 *the end of each fiscal year, the Council shall submit to Con-*

1 gress a report detailing the activities of the Council in the
 2 preceding fiscal year in carrying out this section.

3 ***Subtitle C—Miscellaneous***
 4 ***Acquisition Laws***

5 ***SEC. 4151. RESTRICTION ON USE OF NONCOMPETITIVE***
 6 ***PROCEDURES FOR PROCUREMENT FROM A***
 7 ***SPECIFIED SOURCE.***

8 (a) *ARMED SERVICES ACQUISITIONS.*—Section 2304 of
 9 title 10, United States Code, is further amended—

10 (1) in subsection (c)(5), by inserting “subject to
 11 subsection (k),” after “(5)”; and

12 (2) by adding at the end the following new sub-
 13 section:

14 “(k)(1) It is the policy of Congress that no legislation
 15 should be enacted that requires a procurement by an agency
 16 to be made from a specified non-Federal Government source.

17 “(2) A provision of law may not be construed as re-
 18 quiring a procurement by an agency to be made from a
 19 specified non-Federal Government source unless that provi-
 20 sion of law—

21 “(A) specifically refers to this subsection;

22 “(B) specifically identifies the particular non-
 23 Federal Government source from which the procure-
 24 ment is to be made; and

1 “(C) specifically states that the procurement
2 from that source is required by such provision of law
3 in contravention of the policy set forth in paragraph
4 (1).”.

5 (b) *CIVILIAN AGENCY ACQUISITIONS*.—Section 303 of
6 the Federal Property and Administrative Services Act of
7 1949 (41 U.S.C. 253) is amended—

8 (1) in subsection (c)(5), by inserting “subject to
9 subsection (h),” after “(5)”; and

10 (2) by adding at the end the following new sub-
11 section:

12 “(h)(1) It is the policy of Congress that no legislation
13 should be enacted that requires a procurement by an execu-
14 tive agency to be made from a specified non-Federal Gov-
15 ernment source.

16 “(2) A provision of law may not be construed as re-
17 quiring a procurement by an executive agency to be made
18 from a specified non-Federal Government source unless that
19 provision of law—

20 “(A) specifically refers to this subsection;

21 “(B) specifically identifies the particular non-
22 Federal Government source involved; and

23 “(C) specifically states that the procurement
24 from that source is required by such provision of law

1 *in contravention of the policy set forth in paragraph*
2 *(1).”.*

3 **SEC. 4152. REPEAL OF OBSOLETE PROVISION.**

4 *Section 308 of the Federal Property and Administra-*
5 *tive Services Act of 1949 (41 U.S.C. 258) is repealed.*

6 **TITLE V—STANDARDS OF**
7 **CONDUCT**

8 **SEC. 5001. CONTRACTING FUNCTIONS PERFORMED BY FED-**
9 **ERAL PERSONNEL.**

10 *(a) AMENDMENT OF OFPP ACT.—The Office of Fed-*
11 *eral Procurement Policy Act, as amended by section 1091,*
12 *is further amended by inserting after section 22 the follow-*
13 *ing new section 23:*

14 **“SEC. 23. CONTRACTING FUNCTIONS PERFORMED BY FED-**
15 **ERAL PERSONNEL.**

16 *“(a) LIMITATION ON USE OF CONTRACT ADVISORY*
17 *AND ASSISTANCE SERVICES.—The head of an agency may*
18 *not provide for an evaluation or analysis of any aspect of*
19 *a proposal submitted for an acquisition by that agency to*
20 *be conducted by a person who is not an employee of an*
21 *executive agency or a member of the Armed Forces unless*
22 *the agency head determines that employees or members with*
23 *adequate training and capability to perform the evaluation*
24 *or analysis are not readily available within the agency or*
25 *any other executive agency.*

1 “(b) *COMPLIANCE WITH FAR STANDARDS.*—In the
2 administration of this section, the head of each executive
3 agency shall comply with the Federal Acquisition Regula-
4 tion in determining whether expertise is readily available
5 and in determining the standards of adequate training and
6 capability of employees and members of the Armed Forces
7 to conduct acquisitions.

8 “(c) *DEFINITION.*—For purposes of this section, the
9 term ‘employee’ has the meaning given such term by section
10 2105 of title 5, United States Code.”.

11 (b) *REQUIREMENT FOR GUIDANCE AND REGULA-*
12 *TIONS.*—

13 (1) *GUIDANCE AND REGULATIONS REQUIRED.*—
14 The Federal Acquisition Regulatory Council estab-
15 lished by section 25(a) of the Office of Federal Pro-
16 curement Policy Act (41 U.S.C. 421(a)) shall provide
17 guidance and promulgate regulations regarding—

18 (A) what actions Federal agencies are re-
19 quired to take to determine whether expertise is
20 readily available within the Federal Government
21 before contracting for advisory and technical
22 services to conduct acquisitions; and

23 (B) the manner in which Federal employees
24 with expertise may be shared with agencies need-
25 ing expertise for such acquisitions.

1 (2) *DEFINITION.*—In paragraph (1), the term
 2 “employee” has the meaning given such term by sec-
 3 tion 2105 of title 5, United States Code.

4 (3) *DEADLINE.*—The guidance and regulations
 5 required by paragraph (1) shall be provided and pro-
 6 mulgated not later than 180 days after the date of the
 7 enactment of this Act.

8 **SEC. 5002. REPEAL OF EXECUTED REQUIREMENT FOR**
 9 **STUDY AND REPORT.**

10 Section 17 of the Office of Federal Procurement Policy
 11 Act (41 U.S.C. 415) is repealed.

12 **SEC. 5003. WAITING PERIOD FOR SIGNIFICANT CHANGES**
 13 **PROPOSED FOR ACQUISITION REGULATIONS.**

14 Section 22 of the Office of Federal Procurement Policy
 15 Act (41 U.S.C. 418b) is amended—

16 (1) by striking out “30 days” in subsection (a)
 17 and inserting in lieu thereof “45 days”; and

18 (2) by adding at the end of subsection (d) the fol-
 19 lowing new paragraph:

20 “(3) A policy, regulation, procedure, or form described
 21 in subsection (a) may (notwithstanding that subsection)
 22 take effect earlier than 45 days after the date of publication
 23 thereof in the Federal Register pursuant to subsection (b)
 24 if the officer authorized to issue the procurement policy, reg-
 25 ulation, procedure, or form determines that compelling cir-

1 *cumstances make compliance with the 45-day requirement*
 2 *under subsection (a) impracticable. However, the policy,*
 3 *regulation, procedure, or form may not take effect earlier*
 4 *than 30 days after the publication date except as provided*
 5 *in paragraph (1).”.*

6 **SEC. 5004. REPEAL OF SUPERSEDED AND OBSOLETE LAWS.**

7 (a) *REPEAL.*—*The following sections of title 10, Unit-*
 8 *ed States Code, are repealed: sections 2207, 2397, 2397a,*
 9 *2397b, and 2397c.*

10 (b) *CLERICAL AMENDMENTS.*—

11 (1) *The table of sections at the beginning of*
 12 *chapter 131 of such title is amended by striking out*
 13 *the item relating to section 2207.*

14 (2) *The table of sections at the beginning of*
 15 *chapter 141 of such title is amended by striking out*
 16 *the items relating to sections 2397, 2397a, 2397b, and*
 17 *2397c.*

18 **TITLE VI—DEFENSE TRADE AND**
 19 **COOPERATION**

20 **SEC. 6001. EXCEPTION TO BUY AMERICAN ACT FOR MICRO-**
 21 **PURCHASES.**

22 *Section 2 of title III of the Act of March 3, 1933 (41*
 23 *U.S.C. 10a), commonly referred to as the “Buy American*
 24 *Act”, is amended by adding at the end the following: “This*
 25 *section shall not apply to manufactured articles, materials,*

1 *or supplies procured under any contract the award value*
 2 *of which is less than or equal to the micro-purchase thresh-*
 3 *old under section 4B of the Office of Federal Procurement*
 4 *Policy Act.”.*

5 **SEC. 6002. POLICY ON PURCHASE OF FOREIGN GOODS.**

6 (a) *IN GENERAL.*—Section 2533 of title 10, United
 7 States Code, is amended to read as follows:

8 **“§2533. Policy on the purchase of foreign goods**

9 “(a) *DETERMINATION UNDER BUY AMERICAN ACT.*—
 10 *In determining whether application of title III of the Act*
 11 *of March 3, 1933 (41 U.S.C. 10a et seq.), popularly known*
 12 *as the ‘Buy American Act’, is inconsistent with the public*
 13 *interest, the Secretary of Defense shall give adequate consid-*
 14 *eration to the following:*

15 “(1) *The bids or proposals of small business*
 16 *firms in the United States which have offered to fur-*
 17 *nish American goods.*

18 “(2) *The bids or proposals of all other firms in*
 19 *the United States which have offered to furnish Amer-*
 20 *ican goods.*

21 “(3) *The balance of payments of the United*
 22 *States.*

23 “(4) *The cost of shipping goods which are other*
 24 *than American goods.*

1 “(5) Any duty, tariff, or surcharge which may
2 enter into the cost of using goods which are other than
3 American goods.

4 “(6) Coordination of acquisition activities of the
5 Department of Defense with obligations contained in
6 international agreements and with the acquisition ac-
7 tivities of major United States allies.

8 “(7) The need to ensure that the Department of
9 Defense has access to advanced state-of-the-art com-
10 mercial technology.

11 “(8) The need to protect the national technology
12 and industrial base, to preserve and enhance the na-
13 tional technology employment base, and to provide for
14 a defense mobilization base.

15 “(9) The need to maintain the same source of
16 supply for spare and replacement parts either for an
17 end item that qualifies as an American good or to
18 maintain or foster the integration of the military and
19 commercial industrial base.

20 “(10) National security interests of the United
21 States.

22 “(b) In this section, the term ‘goods which are other
23 than American goods’ means—

24 “(1) an end product that is not mined, produced,
25 or manufactured in the United States; or

1 “(2) an end product that is manufactured in the
 2 United States but which includes components mined,
 3 produced, or manufactured outside the United States
 4 the aggregate cost of which exceeds the aggregate cost
 5 of the components of such end product that are mined,
 6 produced, or manufactured in the United States.”.

7 (b) *CLERICAL AMENDMENT.*—The table of sections at
 8 the beginning of subchapter V of chapter 148 of such title
 9 is amended by striking out the item relating to section 2533
 10 and inserting in lieu thereof the following:

 “2533. Policy on purchase of foreign goods.”.

11 **SEC. 6003. CONSOLIDATION OF LIMITATIONS ON PROCURE-**
 12 **MENT OF GOODS OTHER THAN AMERICAN**
 13 **GOODS.**

14 Section 2534 of title 10, United States Code, is amend-
 15 ed—

16 (1) by striking out subsections (a) through (f);

17 (2) by redesignating subsection (g), as added by
 18 section 4032, as subsection (d); and

19 (3) by inserting after the section heading the fol-
 20 lowing:

21 “(a) *LIMITATION ON CERTAIN PROCUREMENTS.*—The
 22 Secretary of Defense may procure the following items only
 23 if they are manufactured by an entity that is part of the
 24 national technology and industrial base (as defined in sec-
 25 tion 2491(1) of this title):

1 “(1) *BUSES.—Multipassenger motor vehicles*
2 *(buses).*

3 “(2) *CHEMICAL WEAPONS ANTIDOTE.—Chemical*
4 *weapons antidote contained in automatic injectors (or*
5 *components for such injectors), but only if the com-*
6 *pany that manufactures the item not only manufac-*
7 *tures it in the United States but also meets the follow-*
8 *ing requirements:*

9 “(A) *The company is an existing producer*
10 *under the industrial preparedness program at*
11 *the time the contract is awarded.*

12 “(B) *The company has received all required*
13 *regulatory approvals.*

14 “(C) *The company has the plant, equip-*
15 *ment, and personnel to perform the contract in*
16 *existence in the United States at the time the*
17 *contract is awarded.*

18 “(3) *VALVES AND MACHINE TOOLS.—(A) Items*
19 *in the following categories:*

20 “(i) *Powered and non-powered valves in*
21 *Federal Supply Classes 4810 and 4820 used in*
22 *pipng for naval surface ships and submarines.*

23 “(ii) *Machine tools in the Federal Supply*
24 *Classes for metal-working machinery numbered*
25 *3405, 3408, 3410 through 3419, 3426, 3433,*

1 3438, 3441 through 3443, 3445, 3446, 3448,
2 3449, 3460, and 3461.

3 “(B) Contracts for the procurement of items de-
4 scribed in subparagraph (A) include contracts—

5 “(i) for the use of such items in any prop-
6 erty under the control of the Department of De-
7 fense, including Government-owned, contractor-
8 operated facilities; and

9 “(ii) entered into by contractors on behalf of
10 the Department of Defense for the purposes of
11 providing such items to other contractors as Gov-
12 ernment-furnished equipment.

13 “(C) In any case in which a contract for items
14 described in subparagraph (A) includes the procure-
15 ment of more than one Federal Supply Class of ma-
16 chine tools or machine tools and accessories, each sup-
17 ply class shall be evaluated separately for purposes of
18 determining whether the limitation in this subsection
19 applies.

20 “(D) This paragraph is effective through fiscal
21 year 1996.

22 “(4) AIR CIRCUIT BREAKERS.—Air circuit break-
23 ers for naval vessels.

24 “(5) SONOBUOYS.—Sonobuoys.

1 “(6) *BALL BEARINGS AND ROLLER BEARINGS.*—
2 *Ball bearings and roller bearings, in accordance with*
3 *subpart 225.71 of part 225 of the Defense Federal Ac-*
4 *quisition Regulation Supplement, as in effect on Oc-*
5 *tober 23, 1992. This paragraph is effective through*
6 *fiscal year 1995.*

7 “(b) *EXCEPTIONS.*—*The Secretary of Defense may*
8 *waive the limitation in subsection (a) with respect to the*
9 *procurement of an item listed in that subsection if the Sec-*
10 *retary determines that any of the following apply:*

11 “(1) *Application of the limitation would cause*
12 *unreasonable costs or delays to be incurred.*

13 “(2) *United States producers of the item would*
14 *not be jeopardized by competition from a foreign*
15 *country and that country does not discriminate*
16 *against defense items produced in the United States*
17 *to a greater degree than the United States discrimi-*
18 *nates against defense items produced in that country.*

19 “(3) *Application of the limitation would impede*
20 *cooperative programs entered into between the De-*
21 *partment of Defense and a foreign country and that*
22 *country does not discriminate against defense items*
23 *produced in the United States to a greater degree*
24 *than the United States discriminates against defense*
25 *items produced in that country.*

1 “(4) *Satisfactory quality items manufactured by*
2 *an entity that is part of the national technology and*
3 *industrial base (as defined in section 2491(1) of this*
4 *title) are not available.*

5 “(5) *Application of the limitation would result*
6 *in the existence of only one source for the item that*
7 *is an entity that is part of the national technology*
8 *and industrial base (as defined in section 2491(1) of*
9 *this title).*

10 “(6) *The procurement is for an amount less than*
11 *the simplified acquisition threshold and simplified*
12 *purchase procedures are being used.*

13 “(7) *Application of the limitation is not in the*
14 *national security interests of the United States.*

15 “(8) *Application of the limitation would ad-*
16 *versely affect a United States company.*

17 “(c) *PRINCIPLE OF CONSTRUCTION WITH FUTURE*
18 *LAWS.—A provision of law may not be construed as modi-*
19 *fying or superseding the provisions of this section, or as*
20 *requiring funds to be limited, or made available, by the Sec-*
21 *retary of Defense to a particular domestic source by con-*
22 *tract, unless that provision of law—*

23 “(1) *specifically refers to this section;*

1 “(2) specifically states that such provision of law
2 modifies or supersedes the provisions of this section;
3 and

4 “(3) specifically identifies the particular domes-
5 tic source involved and states that the contract to be
6 awarded pursuant to such provision of law is being
7 awarded in contravention of this section.”.

8 **SEC. 6004. INTERNATIONAL COOPERATIVE AGREEMENTS.**

9 (a) *DEFENSE INTERNATIONAL AGREEMENTS.*—

10 (1) *TERMINOLOGY REVISIONS.*—Section 2531 of
11 title 10, United States Code, is amended—

12 (A) in the subsection captions for sub-
13 sections (a) and (c), by striking out “MOUS AND
14 RELATED” and inserting in lieu thereof “INTER-
15 NATIONAL”;

16 (B) in subsection (a), by striking out “pro-
17 posed memorandum of understanding, or any ex-
18 isting or proposed agreement related to a memo-
19 randum of understanding,” in the matter preced-
20 ing paragraph (1) and inserting in lieu thereof
21 “proposed international agreement, including a
22 memorandum of understanding,”;

23 (C) by striking out “memorandum of under-
24 standing or related agreement” each place it ap-

1 *pears and inserting in lieu thereof “inter-*
2 *national agreement”;*

3 *(D) in subsection (b), by striking out*
4 *“memorandum or related agreement” each place*
5 *it appears in the second sentence and inserting*
6 *in lieu thereof “international agreement”; and*

7 *(E) in subsection (c)—*

8 *(i) by striking out “A” after “AGREE-*
9 *MENTS.—” and inserting in lieu thereof*
10 *“An”; and*

11 *(ii) by striking out “memorandum or*
12 *agreement” and inserting in lieu thereof*
13 *“international agreement”.*

14 *(2) EXPANDED SCOPE OF AGREEMENTS.—Sub-*
15 *section (a) of such section is further amended by*
16 *striking out “research, development, or production” in*
17 *the matter preceding paragraph (1) and inserting in*
18 *lieu thereof “research, development, production, or lo-*
19 *gistics support”.*

20 *(3) CLERICAL AMENDMENTS.—*

21 *(A) SECTION HEADING.—The heading of*
22 *such section is amended to read as follows:*

23 ***“§ 2531. Defense international agreements”.***

24 *(B) TABLE OF SECTIONS.—The item relat-*
25 *ing to such section in the table of sections at the*

1 *beginning of subchapter V of chapter 148 of such*
 2 *title is amended to read as follows:*

“2531. Defense international agreements.”.

3 (b) *ADDITION TO DEFINITION OF COOPERATIVE*
 4 *PROJECT.—Section 2350i(c)(1) of title 10, United States*
 5 *Code, is amended in subparagraph (B)—*

6 (1) *by striking out “or” at the end of clause (ii);*

7 (2) *by redesignating clause (iii) as clause (iv);*

8 *and*

9 (3) *by inserting after clause (ii) the following:*

10 *“(iii) modifying existing military*
 11 *equipment to meet United States military*
 12 *requirements; or”.*

13 ***SEC. 6005. MISCELLANEOUS REPEALS.***

14 (a) *REPEAL OF BUY AMERICAN REQUIREMENT FOR*
 15 *POLICY GUIDANCE.—Title III of the Act of March 3, 1933*
 16 *(41 U.S.C. 10a et seq.), commonly referred to as the “Buy*
 17 *American Act”, is amended in section 4(g) (41 U.S.C. 10b–*
 18 *1(g)) by striking out paragraphs (2)(C) and (3).*

19 (b) *REPEAL OF BUY AMERICAN REPORTING REQUIRE-*
 20 *MENT.—Section 9096(b) of Public Law 102–396 (106 Stat.*
 21 *1924; 41 U.S.C. 10b–2(b)) is repealed.*

22 (c) *REPEAL OF STUDIES OF BUY AMERICAN ACT*
 23 *WAIVERS.—Section 306 of the Trade Agreements Act of*
 24 *1979 (19 U.S.C. 2516), relating to studies of certain em-*
 25 *ployment effects and procurement effects of a waiver of title*

1 *III of the Act of March 3, 1933 (41 U.S.C. 10a et seq.),*
 2 *commonly referred to as the “Buy American Act”, is re-*
 3 *pealed.*

4 ***TITLE VII—COMMERCIAL ITEMS***
 5 ***Subtitle A—Armed Services***
 6 ***Acquisitions***

7 ***SEC. 7001. ESTABLISHMENT OF NEW CHAPTER IN TITLE 10.***

8 *(a) ESTABLISHMENT.—Part IV of subtitle A of title*
 9 *10, United States Code, is amended by inserting before*
 10 *chapter 137 the following new chapter 136:*

11 ***“CHAPTER 136—PROCUREMENT OF***
 12 ***COMMERCIAL ITEMS***

“Sec.

“2281. Definitions.

“2282. Preference for acquisition of commercial items.

“2283. Pricing documentation for commercial items.

“2284. Regulations; required terms and conditions.

“2285. Principle of construction with future laws.

“2286. Inapplicability of certain provisions of law.”.

13 *(b) CLERICAL AMENDMENT.—The tables of chapters at*
 14 *the beginning of subtitle A of title 10, United States Code,*
 15 *and the beginning of part IV of such subtitle are amended*
 16 *by inserting before the item relating to chapter 137 the fol-*
 17 *lowing new item:*

“136. Procurement of Commercial Items 2281”.

18 ***SEC. 7002. DEFINITIONS.***

19 *Chapter 136 of title 10, United States Code, as added*
 20 *by section 7001, is amended by adding after the table of*
 21 *sections the following:*

1 **“§ 2281. Definitions**

2 *“In this chapter:*

3 *“(1) The term ‘commercial item’ means any of*
4 *the following:*

5 *“(A) Any item of a type customarily used*
6 *in the course of normal business operations for*
7 *other than Federal Government purposes, that—*

8 *“(i) has been sold, leased, or licensed to*
9 *the general public or to domestic State or*
10 *local government entities; or*

11 *“(ii) has been offered for sale, lease, or*
12 *license to the general public or to domestic*
13 *State or local government entities.*

14 *“(B) An item intended to be used in the*
15 *course of normal business operations for other*
16 *than Federal Government purposes that is not*
17 *yet available in the commercial marketplace, but*
18 *will be available in the commercial marketplace*
19 *in time to satisfy the delivery requirements*
20 *under a Federal Government solicitation.*

21 *“(C) Any item that, but for—*

22 *“(i) modifications of a type customar-*
23 *ily available in the commercial market-*
24 *place, or*

25 *“(ii) minor modifications made to*
26 *meet Federal Government requirements,*

1 *would satisfy the criteria in subparagraph (A)*
2 *or (B).*

3 *“(D) Any combination of items meeting the*
4 *requirements of subparagraph (A), (B), or (C)*
5 *that are of a type customarily combined and sold*
6 *in combination to the general public.*

7 *“(E) Services offered and sold competitively,*
8 *in significant quantities, in the commercial mar-*
9 *ketplace at established catalog prices or standard*
10 *rates and under standard commercial terms and*
11 *conditions.*

12 *“(F) Any item, combination of items, or*
13 *service referred to in subparagraphs (A) through*
14 *(E), notwithstanding the fact that the item, com-*
15 *bination of items, or service is transferred be-*
16 *tween or among separate divisions, subsidiaries,*
17 *or affiliates of a contractor.*

18 *“(2) The term ‘nondevelopmental item’ means*
19 *any of the following:*

20 *“(A) Any previously developed item of sup-*
21 *ply that is in use by a department or agency of*
22 *the United States, a State or local government,*
23 *or a foreign government with which the United*
24 *States has a mutual defense cooperation agree-*
25 *ment.*

1 “(B) Any item of supply described in sub-
2 paragraph (A) that requires only minor modi-
3 fication or modification of the type customarily
4 available in the commercial marketplace in order
5 to meet the requirements of the procuring depart-
6 ment or agency.

7 “(C) Any item of supply currently being
8 produced that does not meet the requirements of
9 subparagraph (A) or (B) solely because the
10 item—

11 “(i) is not yet in use; or

12 “(ii) is not yet available in the com-
13 mercial marketplace.

14 “(3) The term ‘component’ means any item sup-
15 plied to the Federal Government as part of an end
16 item or of another component.

17 “(4) The term ‘commercial component’ means
18 any component that is a commercial item.

19 “(5) The term ‘head of an agency’ means the
20 Secretary of Defense, the Secretary of Transportation,
21 and the Administrator of the National Aeronautics
22 and Space Administration.

23 “(6) The term ‘agency’ means the Department of
24 Defense, the Coast Guard, and the National Aero-
25 nautics and Space Administration.”.

1 **SEC. 7003. PREFERENCE FOR ACQUISITION OF COMMER-**
2 **CIAL ITEMS.**

3 (a) *IN GENERAL.*—Chapter 136 of title 10, United
4 States Code, as amended by section 7002, is further amend-
5 ed by adding after section 2281 the following new section:

6 **“§2282. Preference for acquisition of commercial**
7 **items**

8 “(a) *PREFERENCE.*—(1) The head of an agency shall
9 ensure that, to the maximum extent practicable—

10 “(A) requirements of the agency with respect to
11 a procurement of supplies are stated in terms of—

12 “(i) functions to be performed,

13 “(ii) performance required, or

14 “(iii) essential physical characteristics;

15 “(B) such requirements are defined so that com-
16 mercial items may be procured to fulfill such require-
17 ments; and

18 “(C) such requirements are fulfilled through the
19 procurement of commercial items.

20 “(2) The head of an agency shall ensure that, to the
21 maximum extent practicable, requirements of the agency
22 with respect to a procurement of supplies are defined so
23 that nondevelopmental items may be procured to fulfill such
24 requirements in any case in which commercial items that
25 fulfill the requirements of the agency are not available.

1 “(b) *IMPLEMENTATION.*—*The head of each agency shall*
2 *ensure that procurement officials in the agency, to the max-*
3 *imum extent practicable—*

4 “(1) *acquire commercial items to meet the needs*
5 *of the agency;*

6 “(2) *require prime contractors and subcontrac-*
7 *tors at all levels under the contracts of the agency to*
8 *incorporate commercial items as components of items*
9 *supplied to the agency;*

10 “(3) *modify requirements in appropriate cases to*
11 *ensure that the requirements can be met by commer-*
12 *cial items;*

13 “(4) *state specifications in terms that enable and*
14 *encourage bidders and offerors to supply commercial*
15 *items in response to the solicitations of the agency;*

16 “(5) *revise the procurement policies, practices,*
17 *and procedures of the agency that are not required by*
18 *law to reduce any impediments in those policies,*
19 *practices, and procedures to the acquisition of com-*
20 *mercial items; and*

21 “(6) *require training of appropriate personnel in*
22 *the acquisition of commercial items.*

23 “(c) *EXISTING OR PRIOR SOURCES OF*
24 *NONDEVELOPMENTAL ITEMS.*—(1) *Notwithstanding sub-*
25 *section (a), the Secretary of Defense, the Secretary of a mili-*

1 tary department, or the head of a Defense Agency may,
2 until five years after the date of the enactment of the Fed-
3 eral Acquisition Improvement Act of 1994, determine that
4 it is in the Government's interests to permit existing or
5 prior sources of nondevelopmental items to participate in
6 a competition for a commercial item in a case in which
7 a nondevelopmental item will compete with a commercial
8 item under the same terms, conditions, and evaluation and
9 award criteria.

10 “(2) Nondevelopmental items furnished by an existing
11 or prior source that must be modified to meet the require-
12 ments of a solicitation for commercial items may be offered
13 under such a solicitation, but only in a case in which the
14 modifications—

15 “(A) are necessary to comply with the Govern-
16 ment's solicitation requirements; and

17 “(B) do not significantly alter the function or es-
18 sential physical characteristics of the items to be sup-
19 plied.

20 “(3) The policies, procedures, solicitation provisions,
21 and contract clauses applicable to commercial items under
22 this chapter also shall apply to nondevelopmental items fur-
23 nished by an existing or prior source that is permitted to
24 participate in a competition conducted under this title.

1 “(d) *PRELIMINARY MARKET RESEARCH.*—(1) *The*
 2 *head of an agency shall conduct market research appro-*
 3 *priate to the circumstances—*

4 “(A) *before developing new specifications for a*
 5 *procurement by the agency; and*

6 “(B) *before soliciting bids or proposals for a con-*
 7 *tract in excess of the simplified acquisition threshold.*

8 “(2) *The head of the agency shall use the results of*
 9 *market research to determine whether there are commercial*
 10 *items available that—*

11 “(A) *meet the requirements of the agency;*

12 “(B) *could be modified to meet such require-*
 13 *ments; or*

14 “(C) *could meet such requirements if those re-*
 15 *quirements were modified to a reasonable extent.”.*

16 (b) *REPEAL OF SUPERSEDED PROVISION.*—*Section*
 17 *2325 of title 10, United States Code, is repealed. The table*
 18 *of sections at the beginning of chapter 137 of such title is*
 19 *amended by striking out the item relating to section 2325.*

20 ***SEC. 7004. PRICING DOCUMENTATION FOR COMMERCIAL***
 21 ***ITEMS.***

22 (a) *IN GENERAL.*—*Chapter 136 of title 10, United*
 23 *States Code, as amended by section 7003, is further amend-*
 24 *ed by adding after section 2282 the following new section:*

1 **“§2283. Pricing documentation for commercial items**

2 “(a) *REQUIREMENT FOR DETERMINATION OF PRICE*
3 *REASONABLENESS.—(1) When the price of a commercial*
4 *item is based on adequate price competition or on estab-*
5 *lished catalog or market prices of items sold in sufficient*
6 *quantities to the general public, the contracting officer shall*
7 *presume that the price contained in the most advantageous*
8 *evaluated offer (price and all other factors considered) re-*
9 *ceived in response to a solicitation, or a price based on es-*
10 *tablished catalog or market prices, is fair and reasonable*
11 *unless the contracting officer has information that the price*
12 *is not fair and reasonable. Before the award of a contract*
13 *for which price is based on catalog or market prices, the*
14 *contracting officer shall make reasonable efforts to establish*
15 *the currency and accuracy of such prices.*

16 “(2) *When the price of a commercial item is not pre-*
17 *sumed fair and reasonable under paragraph (1), the con-*
18 *tracting officer shall use price analysis to determine wheth-*
19 *er the price is fair and reasonable.*

20 “(3) *When required by the contracting officer before*
21 *award of a contract or contract definitization, the offeror*
22 *shall promptly furnish documentation, in the form regu-*
23 *larly maintained in commercial operations, adequate to*
24 *demonstrate the market price of the item or items or other-*
25 *wise needed to establish a fair and reasonable price. All doc-*
26 *umentation received from an offeror, if not otherwise in the*

1 *public domain and if requested by the offeror and marked*
2 *as proprietary, shall be treated by the Government as con-*
3 *fidential and exempt from disclosure to the extent permitted*
4 *by section 552 of title 5. In this paragraph, the term ‘con-*
5 *tract definitization’ means agreement to contractual terms,*
6 *specifications, and price.*

7 “(4) *In any case in which a contracting officer is able*
8 *to determine under paragraph (1) or (2) that a price is*
9 *reasonable, the procurement shall be exempt from section*
10 *2306a of this title.*

11 “(5) *In any case in which a contracting officer is un-*
12 *able to determine under paragraph (1) or (2) that a price*
13 *is reasonable, the contracting officer may require cost or*
14 *pricing data under section 2306a of this title.*

15 “(b) *GOVERNMENT’S RIGHT TO AUDIT.—(1) The*
16 *United States shall have the right to audit all documenta-*
17 *tion provided by an offeror under subsection (a)(3) and all*
18 *books and records of the offeror directly relating to such doc-*
19 *umentation, except that, if the offeror has made no represen-*
20 *tation as to the completeness of the documentation supplied,*
21 *the United States shall have no right to audit for complete-*
22 *ness. When contract price is established under this section,*
23 *the United States shall have no audit rights other than those*
24 *set out in this subsection.*

25 “(2) *The right under this subsection shall expire—*

(b) *CROSS REFERENCE.*—Section 2306a of title 10, United States Code, is amended by adding at the end the following new subsection:

16 *SEC. 7005. REGULATIONS ON ACQUISITION OF COMMER-*
17 *CIAL ITEMS.*

21 ***“§2284. Regulations; required terms and conditions***

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1 *tions shall include provisions implementing the preference*
2 *for commercial items set out in section 2282 of this title.*

3 “(b) *TERMS AND CONDITIONS.*—*The regulations pre-*
4 *scribed under subsection (a) shall contain a set or sets of*
5 *terms and conditions to be included in contracts for the ac-*
6 *quisition of commercial items. Such terms and conditions*
7 *shall, to the maximum extent practicable, include only those*
8 *contract clauses that are determined by the head of the*
9 *agency to be—*

10 “(1) *required to implement provisions of law ap-*
11 *plicable to commercial item acquisitions; or*

12 “(2) *consistent with standard commercial prac-*
13 *tice.*

14 “(c) *TERMS AND CONDITIONS FOR COMPONENTS.*—
15 *Such regulations shall provide that a prime contractor fur-*
16 *nishing commercial items or items other than commercial*
17 *items as items or components shall not be required to apply*
18 *to any of its divisions, subsidiaries, or affiliates or any of*
19 *its subcontractors or suppliers that are furnishing commer-*
20 *cial items as components any clause, term, or condition ex-*
21 *cept those determined by the head of the agency to be—*

22 “(1) *required to implement provisions of law ap-*
23 *plicable to subcontractors furnishing commercial*
24 *items; or*

1 “(2) *determined to be consistent with standard*
2 *commercial practice.*

3 “(d) *MARKET ACCEPTANCE.—The regulations pre-*
4 *scribed under subsection (a) shall provide that, under ap-*
5 *propriate conditions, the head of the agency may require*
6 *an offeror to demonstrate, as a condition for being consid-*
7 *ered responsive, that the items offered meet, among other*
8 *criteria, market acceptance criteria, unless such item has*
9 *been satisfactorily supplied to an executive agency under*
10 *current or recent contracts for the same or similar require-*
11 *ments.*

12 “(e) *USE OF FIXED PRICE CONTRACTS.—The regula-*
13 *tions prescribed under subsection (a) shall include a re-*
14 *quirement that firm, fixed price contracts, or fixed price*
15 *contracts with economic price adjustment provisions, be*
16 *used for the acquisition of commercial items and compo-*
17 *nents.*

18 “(f) *TERM OF CONTRACTS.—The regulations pre-*
19 *scribed under subsection (a) shall provide that, to the extent*
20 *practicable, contracts for acquisition of commercial items*
21 *shall not require contract performance for a term longer*
22 *than customary industry practice for the item being ac-*
23 *quired. A contracting officer may include in a contract pro-*
24 *visions for economic price adjustment if an extended period*
25 *of performance under the contract cannot be avoided.*

1 “(g) *CONTRACT QUALITY REQUIREMENTS.*—The regu-
2 lations prescribed under subsection (a) shall include provi-
3 sions that—

4 “(1) permit, to the maximum extent practicable,
5 a contractor under a commercial items acquisition to
6 use the existing quality assurance system of the con-
7 tractor as a substitute for compliance with an other-
8 wise applicable requirement for the Government to in-
9 spect or test the commercial items before the contrac-
10 tor’s tender of those items for acceptance by the Gov-
11 ernment;

12 “(2) require that, to the maximum extent prac-
13 ticable, the head of the agency take advantage of war-
14 ranties (including extended warranties) offered by
15 offerors of commercial items and use such warranties
16 for the repair and replacement of commercial items;
17 and

18 “(3) set forth guidance regarding the use of past
19 performance of commercial items and sources as a
20 factor in contract award decisions.”.

21 (b) *DEFENSE CONTRACT CLAUSES.*—

22 (1) *REPEAL OF DOD AUTHORITY.*—Section
23 824(b) of the National Defense Authorization Act for
24 Fiscal Years 1990 and 1991 (Public Law 101–189; 10
25 U.S.C. 2325 note) is repealed.

1 (2) *SAVINGS PROVISION.*—Notwithstanding sub-
 2 sections (b) and (c) of section 2284 of title 10, U.S.C.,
 3 as added by subsection (a), a contract of the Depart-
 4 ment of Defense entered into before October 1, 1994,
 5 and a subcontract entered into before such date under
 6 such a contract, may include clauses developed pursu-
 7 ant to paragraphs (2) and (3) of section 824(b) of the
 8 National Defense Authorization Act for Fiscal Years
 9 1990 and 1991 (Public Law 101–189; 10 U.S.C. 2325
 10 note).

11 **SEC. 7006. PRINCIPLE OF CONSTRUCTION WITH FUTURE**
 12 **LAWS.**

13 Chapter 136 of title 10, United States Code, as amend-
 14 ed by section 7005, is further amended by adding after sec-
 15 tion 2284 the following new section:

16 **“§ 2285. Principle of construction with future laws**

17 “A provision of law enacted after the date of the enact-
 18 ment of the Federal Acquisition Improvement Act of 1994
 19 may not be construed as modifying or superseding any pro-
 20 vision of this chapter unless that provision of law specifi-
 21 cally refers to this section and specifically states that such
 22 provision of law modifies or supersedes such provision of
 23 this chapter.”.

1 **SEC. 7007. INAPPLICABILITY OF CERTAIN PROVISIONS OF**
2 **LAW.**

3 (a) *INAPPLICABLE PROVISIONS.*—Chapter 136 of title
4 10, United States Code, as amended by section 7006, is fur-
5 ther amended by adding after section 2285 the following
6 new section:

7 **“§ 2286. Inapplicability of certain provisions of law**

8 “(a) *PROVISIONS INAPPLICABLE TO PRIME CONTRAC-*
9 *TORS.*—The following provisions of law (and regulations
10 prescribed under such provisions) shall not apply to any
11 contract entered into by an agency for the procurement of
12 a commercial item:

13 “(1) Section 2306(b) of this title (relating to pro-
14 hibition on contingent fees).

15 “(2) Section 2320 of this title (relating to rights
16 in technical data).

17 “(3) Section 2321 of this title (relating to vali-
18 dation of proprietary data restrictions).

19 “(4) Section 2324 of this title (relating to allow-
20 able costs).

21 “(5) Section 2384(b) of this title (relating to re-
22 quirement to identify suppliers and sources of sup-
23 plies).

24 “(6) Section 2393(d) of this title (relating to
25 prohibition against doing business with certain
26 offerors or contractors).

1 “(7) Section 2402 of this title (relating to prohi-
2 bition on limitation of subcontractor direct sales).

3 “(8) Section 2408(a) of this title (relating to
4 prohibition on persons convicted of defense contract-
5 related felonies).

6 “(9) Section 2410b of this title (relating to con-
7 tractor inventory accounting system standards).

8 “(10) Section 843 of Public Law 103–160 (107
9 Stat. 1720) (relating to reports of defense contractors
10 of dealings with terrorist countries).

11 “(11) Section 26 of the Office of Federal Procure-
12 ment Policy Act (41 U.S.C. 422) (relating to cost ac-
13 counting standards board).

14 “(12) Section 27(e) of the Office of Federal Pro-
15 curement Policy Act (41 U.S.C. 423(e)) (relating to
16 procurement integrity).

17 “(13) The Drug-Free Workplace Act of 1988
18 (subtitle D of title V of Public Law 100–690; 41
19 U.S.C. 701 et seq.).

20 “(b) PROVISIONS INAPPLICABLE TO SUBCONTRACTORS
21 AND OTHER ENTITIES.—

22 “(1) LAWS INAPPLICABLE.—The following provi-
23 sions of law (and regulations prescribed under such
24 provisions) shall not apply to any entity described in
25 paragraph (2):

1 “(A) *Each provision of law listed under*
2 *subsection (a).*

3 “(B) *Sections 2533 and 2534 of this title*
4 *(relating to goods which are other than American*
5 *goods).*

6 “(C) *The Act of March 3, 1933, commonly*
7 *referred to as the ‘Buy American Act’ (41 U.S.C.*
8 *10a–10c).*

9 “(2) *COVERED ENTITIES.—Paragraph (1) ap-*
10 *plies to each of the following:*

11 “(A) *Any division, subsidiary, or affiliate*
12 *of a prime contractor (other than the division,*
13 *subsidiary, or affiliate that is contracting with*
14 *the Government under the prime contract) or of*
15 *a subcontractor of a prime contractor, if such di-*
16 *vision, subsidiary, or affiliate is furnishing a*
17 *commercial item to the prime contractor or sub-*
18 *contractor for purposes of carrying out the prime*
19 *contract or subcontract.*

20 “(B) *Any subcontractor or supplier of a*
21 *prime contractor, if the subcontractor or supplier*
22 *is furnishing a commercial item to the prime*
23 *contractor for purposes of carrying out the prime*
24 *contract.*

1 “(c) *DEFINITION.*—In this section, the term ‘prime
2 contractor’ means a person under contract directly with the
3 Department of Defense.”.

4 **SEC. 7008. CONFORMING AMENDMENTS RELATING TO INAP-**
5 **PLICABILITY OF CERTAIN PROVISIONS OF**
6 **LAW.**

7 (a) *INAPPLICABILITY OF REQUIREMENT FOR CON-*
8 *TRACT CLAUSE REGARDING CONTINGENT FEES.*—Section
9 2306(b) of title 10, United States Code, as amended by sec-
10 tion 4032(a), is further amended by inserting before the pe-
11 riod at the end of the sentence added by section 4032(a)
12 the following: “or to a contract for the acquisition of com-
13 mercial items”.

14 (b) *INAPPLICABILITY OF REGULATIONS ON RIGHTS IN*
15 *TECHNICAL DATA.*—Section 2320 of title 10, United States
16 Code, is amended by adding at the end the following new
17 subsection:

18 “(e) The regulations prescribed under subsection (a)
19 shall not apply to contracts for the purchase of commercial
20 items (as defined in section 2281 of this title).”.

21 (c) *INAPPLICABILITY OF REQUIREMENT FOR VALIDA-*
22 *TION OF PROPRIETARY DATA RESTRICTIONS.*—Section
23 2321(a) of title 10, United States Code, is amended by in-
24 serting before the period at the end the following: “, other

1 *than a contract for supplies or services that are commercial*
2 *items (as defined in section 2281 of this title)''.*

3 *(d) INAPPLICABILITY OF REQUIREMENT TO IDENTIFY*
4 *SUPPLIERS AND SOURCES OF SUPPLIES.—Paragraph (2)*
5 *of section 2384(b) of title 10, United States Code, is amend-*
6 *ed to read as follows:*

7 *“(2) The regulations prescribed pursuant to paragraph*
8 *(1) do not apply to a contract that requires the delivery*
9 *of supplies that are commercial items, as defined in section*
10 *2281 of this title.”.*

11 *(e) INAPPLICABILITY OF PROHIBITION AGAINST DOING*
12 *BUSINESS WITH CERTAIN OFFERORS OR CONTRACTORS.—*
13 *Section 2393(d) of title 10, United States Code, as amended*
14 *by section 4032(d), is further amended by adding at the*
15 *end the following: “The requirement shall not apply in the*
16 *case of a subcontract for the acquisition of commercial items*
17 *(as defined in section 2281 of this title).”.*

18 *(f) INAPPLICABILITY OF PROHIBITION ON LIMITATION*
19 *OF SUBCONTRACTOR DIRECT SALES.—Section 2402 of title*
20 *10, United States Code, as amended by section 4032(e), is*
21 *further amended by adding at the end the following new*
22 *subsection:*

23 *“(d)(1) An agreement between the contractor in a con-*
24 *tract for the acquisition of commercial items and a sub-*
25 *contractor under such contract that restricts sales by such*

1 subcontractor directly to persons other than the contractor
 2 may not be considered to unreasonably restrict sales by that
 3 subcontractor to the United States in violation of the provi-
 4 sion included in such contract pursuant to subsection (a)
 5 if the agreement does not result in the United States being
 6 treated differently with regard to the restriction than any
 7 other prospective purchaser of such commercial items from
 8 that subcontractor.

9 “(2) In paragraph (1), the term ‘commercial item’ has
 10 the meaning given such term in section 2281 of this title.”.

11 (g) *INAPPLICABILITY OF PROHIBITION ON PERSONS*
 12 *CONVICTED OF DEFENSE-RELATED FELONIES.*—Section
 13 2408(a) of title 10, United States Code, is amended by add-
 14 ing at the end of paragraph (4), as added by section
 15 4032(f), the following: “The term does not include a con-
 16 tract for the purchase of commercial items (as defined in
 17 section 2281 of this title).”.

18 (h) *INAPPLICABILITY OF CONTRACTOR INVENTORY AC-*
 19 *COUNTING SYSTEM STANDARDS.*—Section 2410b of title 10,
 20 United States Code, is amended by adding after subsection
 21 (b), as added by section 4032(g), the following:

22 “(c) The regulations prescribed pursuant to subsection
 23 (a) shall not apply to a contract for the purchase of com-
 24 mercial items (as defined in section 2281 of this title).”.

***Subtitle B—Civilian Agency
Acquisitions***

SEC. 7011. DEFINITIONS.

Title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.), as amended by section 1554, is further amended by adding after section 314 the following new section:

***“SEC. 315. DEFINITIONS RELATING TO PROCUREMENT OF
COMMERCIAL ITEMS.***

“As used in this title:

*“(1) The term ‘commercial item’ means any of
the following:*

*“(A) Any item of a type customarily used
in the course of normal business operations for
other than Federal Government purposes, that—*

*“(i) has been sold, leased, or licensed to
the general public or to domestic State or
local government entities; or*

*“(ii) has been offered for sale, lease, or
license to the general public or to domestic
State or local government entities.*

*“(B) An item intended to be used in the
course of normal business operations for other
than Federal Government purposes that is not
yet available in the commercial marketplace, but*

1 *will be available in the commercial marketplace*
2 *in time to satisfy the delivery requirements*
3 *under a Federal Government solicitation.*

4 “(C) Any item that, but for—

5 “(i) modifications of a type customar-
6 *ily available in the commercial market-*
7 *place, or*

8 “(ii) minor modifications made to
9 *meet Federal Government requirements,*
10 *would satisfy the criteria in subparagraph (A)*
11 *or (B).*

12 “(D) Any combination of items meeting the
13 *requirements of subparagraph (A), (B), or (C)*
14 *that are of a type customarily combined and sold*
15 *in combination to the general public.*

16 “(E) Services offered and sold competitively,
17 *in significant quantities, in the commercial mar-*
18 *ketplace at established catalog prices or standard*
19 *rates and under standard commercial terms and*
20 *conditions.*

21 “(F) Any item, combination of items, or
22 *service referred to in subparagraphs (A) through*
23 *(E), notwithstanding the fact that the item, com-*
24 *bination of items, or service is transferred be-*

1 *tween or among separate divisions, subsidiaries,*
2 *or affiliates of a contractor.*

3 “(2) The term ‘nondevelopmental item’ means
4 *any of the following:*

5 “(A) Any previously developed item of sup-
6 *ply that is in use by a department or agency of*
7 *the United States, a State or local government,*
8 *or a foreign government with which the United*
9 *States has a mutual defense cooperation agree-*
10 *ment.*

11 “(B) Any item of supply described in sub-
12 *paragraph (A) that requires only minor modi-*
13 *fication or modification of the type customarily*
14 *available in the commercial marketplace in order*
15 *to meet the requirements of the procuring depart-*
16 *ment or agency.*

17 “(C) Any item of supply currently being
18 *produced that does not meet the requirements of*
19 *subparagraph (A) or (B) solely because the*
20 *item—*

21 “(i) *is not yet in use; or*

22 “(ii) *is not yet available in the com-*
23 *mercial marketplace.*

1 “(3) The term ‘component’ means any item sup-
 2 plied to the Federal Government as part of an end
 3 item or of another component.

4 “(4) The term ‘commercial component’ means
 5 any component that is a commercial item.”.

6 **SEC. 7012. PREFERENCE FOR ACQUISITION OF COMMER-**
 7 **CIAL ITEMS.**

8 Title III of the Federal Property and Administrative
 9 Services Act of 1949 (41 U.S.C. 251 et seq.), as amended
 10 by section 7011, is further amended by adding after section
 11 315 the following new section:

12 **“SEC. 315A. PREFERENCE FOR ACQUISITION OF COMMER-**
 13 **CIAL ITEMS.**

14 “(a) PREFERENCE.—(1) The head of each executive
 15 agency shall ensure that, to the maximum extent prac-
 16 ticable—

17 “(A) requirements of the executive agency with
 18 respect to a procurement of supplies are stated in
 19 terms of—

20 “(i) functions to be performed,

21 “(ii) performance required, or

22 “(iii) essential physical characteristics;

23 “(B) such requirements are defined so that com-
 24 mercial items may be procured to fulfill such require-
 25 ments; and

1 “(C) such requirements are fulfilled through the
2 procurement of commercial items.

3 “(2) The head of an agency shall ensure that, to the
4 maximum extent practicable, requirements of the agency
5 with respect to a procurement of supplies are defined so
6 that nondevelopmental items may be procured to fulfill such
7 requirements in any case in which commercial items that
8 fulfill the requirements of the agency are not available.

9 “(b) IMPLEMENTATION.—The head of each executive
10 agency shall ensure that procurement officials in that execu-
11 tive agency, to the maximum extent practicable—

12 “(1) acquire commercial items to meet the needs
13 of the executive agency;

14 “(2) require prime contractors and subcontractors
15 at all levels under the executive agency contracts
16 to incorporate commercial items as components of
17 items supplied to the executive agency;

18 “(3) modify requirements in appropriate cases to
19 ensure that the requirements can be met by commercial
20 items;

21 “(4) state specifications in terms that enable and
22 encourage bidders and offerors to supply commercial
23 items in response to the solicitations of the executive
24 agency;

1 “(5) revise the procurement policies, practices,
2 and procedures of the executive agency that are not
3 required by law to reduce any impediments in those
4 policies, practices, and procedures to the acquisition
5 of commercial items; and

6 “(6) require training of appropriate personnel in
7 the acquisition of commercial items.

8 “(c) EXISTING OR PRIOR SOURCES OF
9 NONDEVELOPMENTAL ITEMS.—(1) Notwithstanding sub-
10 section (a), the head of an executive agency may, until five
11 years after the date of the enactment of the Federal Acquisi-
12 tion Improvement Act of 1994, determine that it is in the
13 Government’s interests to permit existing or prior sources
14 of nondevelopmental items to participate in a competition
15 for a commercial item in a case in which a
16 nondevelopmental item will compete with a commercial
17 item under the same terms, conditions, and evaluation and
18 award criteria.

19 “(2) Nondevelopmental items furnished by an existing
20 or prior source that must be modified to meet the require-
21 ments of a solicitation for commercial items may be offered
22 under such a solicitation, but only in a case in which the
23 modifications—

24 “(A) are necessary to comply with the Govern-
25 ment’s solicitation requirements; and

1 “(B) do not significantly alter the function or es-
2 sential physical characteristics of the items to be sup-
3 plied.

4 “(3) The policies, procedures, solicitation provisions,
5 and contract clauses applicable to commercial items under
6 this chapter also shall apply to nondevelopmental items fur-
7 nished by an existing or prior source that is permitted to
8 participate in a competition conducted under this title.

9 “(d) *PRELIMINARY MARKET RESEARCH*.—(1) The
10 head of an executive agency shall conduct market research
11 appropriate to the circumstances—

12 “(A) before developing new specifications for a
13 procurement by that executive agency; and

14 “(B) before soliciting bids or proposals for a con-
15 tract in excess of the simplified acquisition threshold.

16 “(2) The head of an executive agency shall use the re-
17 sults of market research to determine whether there are com-
18 mercial items available that—

19 “(A) meet the requirements of the executive agen-
20 cy;

21 “(B) could be modified to meet such require-
22 ments; or

23 “(C) could meet such requirements if those re-
24 quirements were modified to a reasonable extent.”.

1 **SEC. 7013. PRICING DOCUMENTATION FOR COMMERCIAL**
2 **ITEMS.**

3 (a) *IN GENERAL.*—Title III of the Federal Property
4 and Administrative Services Act of 1949 (41 U.S.C. 251
5 et seq.), as amended by section 7012, is further amended
6 by adding after section 315A the following new section:

7 **“SEC. 315B. PRICING DOCUMENTATION FOR COMMERCIAL**
8 **ITEMS.**

9 “(a) *REQUIREMENT FOR DETERMINATION OF PRICE*
10 *REASONABLENESS.*—(1) When the price of a commercial
11 item is based on adequate price competition or on estab-
12 lished catalog or market prices of items sold in sufficient
13 quantities to the general public, the contracting officer shall
14 presume that the price contained in the most advantageous
15 evaluated offer (price and all other factors considered) re-
16 ceived in response to a solicitation, or a price based on es-
17 tablished catalog or market prices, is fair and reasonable
18 unless the contracting officer has information that the price
19 is not fair and reasonable. Before the award of a contract
20 for which price is based on catalog or market prices, the
21 contracting officer shall make reasonable efforts to establish
22 the currency and accuracy of such prices.

23 “(2) When the price of a commercial item is not pre-
24 sumed fair and reasonable under paragraph (1), the con-
25 tracting officer shall use price analysis to determine wheth-
26 er the price is fair and reasonable.

1 “(3) When required by the contracting officer before
2 award of a contract or contract definitization, the offeror
3 shall promptly furnish documentation, in the form regu-
4 larly maintained in commercial operations, adequate to
5 demonstrate the market price of the item or items or other-
6 wise needed to establish a fair and reasonable price. All doc-
7 umentation received from an offeror, if not otherwise in the
8 public domain and if requested by the offeror and marked
9 as proprietary, shall be treated by the Government as con-
10 fidential and exempt from disclosure to the extent permitted
11 by section 552 of title 5. In this paragraph, the term ‘con-
12 tract definitization’ means agreement to contractual terms,
13 specifications, and price.

14 “(4) In any case in which a contracting officer is able
15 to determine under paragraph (1) or (2) that a price is
16 reasonable, the procurement shall be exempt from section
17 304B of this title.

18 “(5) In any case in which a contracting officer is un-
19 able to determine under paragraph (1) or (2) that a price
20 is reasonable, the contracting officer may require cost or
21 pricing data under section 304B.

22 “(b) GOVERNMENT’S RIGHT TO AUDIT.—(1) The
23 United States shall have the right to audit all documenta-
24 tion provided by an offeror under subsection (a)(3) and all
25 books and records of the offeror directly relating to such doc-

1 *umentation, except that, if the offeror has made no represen-*
2 *tation as to the completeness of the documentation supplied,*
3 *the United States shall have no right to audit for complete-*
4 *ness. When contract price is established under this section,*
5 *the United States shall have no audit rights other than those*
6 *set out in this subsection.*

7 “(2) *The right under this subsection shall expire—*

8 “(A) *one year after the date of commencement of*
9 *performance of the contract, or one year after the date*
10 *of commencement of performance of the modification*
11 *of the contract, with respect to which the information*
12 *was provided; or*

13 “(B) *on such other date agreed upon by the par-*
14 *ties at the time of contract award or contract*
15 *definitization.”.*

16 (b) *CROSS REFERENCE.—Section 304B of the Federal*
17 *Property and Administrative Services Act of 1949, as added*
18 *by section 1251, is amended by adding at the end the follow-*
19 *ing new subsection:*

20 “(h) *ADDITIONAL EXCEPTIONS REGARDING COMMER-*
21 *CIAL ITEMS.—For provisions relating to additional excep-*
22 *tions for procurements of commercial items, see section*
23 *315B of this title.”.*

1 **SEC. 7014. REGULATIONS ON ACQUISITION OF COMMER-**
2 **CIAL ITEMS.**

3 *Title III of the Federal Property and Administrative*
4 *Services Act of 1949 (41 U.S.C. 251 et seq.), as amended*
5 *by section 7013, is further amended by adding after section*
6 *315B the following new section:*

7 **“SEC. 315C. REGULATIONS ON ACQUISITION OF COMMER-**
8 **CIAL ITEMS.**

9 *“(a) IN GENERAL.—The Administrator for Federal*
10 *Procurement Policy shall prescribe regulations to imple-*
11 *ment sections 315 through 315E. The regulations shall in-*
12 *clude provisions implementing the preference for commer-*
13 *cial items set out in section 315A.*

14 *“(b) TERMS AND CONDITIONS.—The regulations pre-*
15 *scribed under subsection (a) shall contain a set or sets of*
16 *terms and conditions to be included in contracts for the ac-*
17 *quisition of commercial end items. Such terms and condi-*
18 *tions shall, to the maximum extent practicable, include only*
19 *those contract clauses that are determined by the agency*
20 *head to be—*

21 *“(1) required to implement provisions of law ap-*
22 *plicable to commercial item acquisitions; or*

23 *“(2) consistent with standard commercial prac-*
24 *tice.*

25 *“(c) TERMS AND CONDITIONS FOR COMPONENTS.—*
26 *Such regulations shall provide that a prime contractor fur-*

1 *nishing commercial items or items other than commercial*
2 *items as items or components shall not be required to apply*
3 *to any of its divisions, subsidiaries, or affiliates or any of*
4 *its subcontractors or suppliers that are furnishing commer-*
5 *cial items as components any clause, term, or condition ex-*
6 *cept those determined by the head of the agency to be—*

7 “(1) *required to implement provisions of law ap-*
8 *plicable to subcontractors furnishing commercial*
9 *items; or*

10 “(2) *determined to be consistent with standard*
11 *commercial practice.*

12 “(d) *MARKET ACCEPTANCE.—The regulations pre-*
13 *scribed under subsection (a) shall provide that, under ap-*
14 *propriate conditions, the agency head may require an*
15 *offeror to demonstrate, as a condition for being considered*
16 *responsive, that the items offered meet, among other criteria,*
17 *market acceptance criteria, unless such item has been satis-*
18 *factorily supplied to an executive agency under current or*
19 *recent contracts for the same or similar requirements.*

20 “(e) *USE OF FIXED PRICE CONTRACTS.—The regula-*
21 *tions prescribed under subsection (a) shall include a re-*
22 *quirement that firm, fixed price contracts, or fixed price*
23 *contracts with economic price adjustment provisions, be*
24 *used for the acquisition of commercial items and compo-*
25 *nents.*

1 “(f) *TERM OF CONTRACTS.*—The regulations pre-
2 scribed under subsection (a) shall provide that, to the extent
3 practicable, contracts for acquisition of commercial items
4 shall not require contract performance for a term longer
5 than customary industry practice for the item being ac-
6 quired. A contracting officer may include in a contract pro-
7 visions for economic price adjustment if an extended period
8 of performance under the contract cannot be avoided.

9 “(g) *CONTRACT QUALITY REQUIREMENTS.*—The regu-
10 lations prescribed under subsection (a) shall include provi-
11 sions that—

12 “(1) permit, to the maximum extent practicable,
13 a contractor under a commercial items acquisition to
14 use the existing quality assurance system of the con-
15 tractor as a substitute for compliance with an other-
16 wise applicable requirement for the Government to in-
17 spect or test the commercial items before the contrac-
18 tor’s tender of those items for acceptance by the Gov-
19 ernment;

20 “(2) require that, to the maximum extent prac-
21 ticable, the executive agency take advantage of war-
22 ranties (including extended warranties) offered by
23 offerors of commercial items and use such warranties
24 for the repair and replacement of commercial items;
25 and

1 “(3) set forth guidance regarding the use of past
2 performance of commercial items and sources as a
3 factor in contract award decisions.”.

4 **SEC. 7015. PRINCIPLE OF CONSTRUCTION WITH FUTURE**
5 **LAWS.**

6 Title III of the Federal Property and Administrative
7 Services Act of 1949 (41 U.S.C. 251 et seq.), as amended
8 by section 7014, is further amended by adding after section
9 315C the following new section:

10 **“SEC. 315D. PRINCIPLE OF CONSTRUCTION WITH FUTURE**
11 **LAWS.**

12 “A provision of law enacted after the date of the enact-
13 ment of the Federal Acquisition Improvement Act of 1994
14 may not be construed as modifying or superseding any pro-
15 vision of sections 315 through 315E unless that provision
16 of law specifically refers to this section and specifically
17 states that such provision of law modifies or supersedes such
18 provision of those sections.”.

19 **SEC. 7016. INAPPLICABILITY OF CERTAIN PROVISIONS OF**
20 **LAW.**

21 Title III of the Federal Property and Administrative
22 Services Act of 1949 (41 U.S.C. 251 et seq.), as amended
23 by section 7015, is further amended by adding after section
24 315D the following new section:

1 **“SEC. 315E. INAPPLICABILITY OF CERTAIN PROVISIONS OF**
2 **LAW.**

3 “(a) *PROVISIONS INAPPLICABLE TO PRIME CONTRAC-*
4 *TORS.—Procurements of commercial items shall not be sub-*
5 *ject to the following provisions of law (or regulations pre-*
6 *scribed under such provisions):*

7 “(1) *Section 303G of this Act (relating to prohi-*
8 *bition on limitation of subcontractor direct sales).*

9 “(2) *Section 304(a) of this Act (relating to pro-*
10 *hibition on contingent fees).*

11 “(3) *Section 26 of the Office of Federal Procure-*
12 *ment Policy Act (41 U.S.C. 422) (relating to cost ac-*
13 *counting standards board).*

14 “(4) *Section 27(e) of the Office of Federal Pro-*
15 *curement Policy Act (41 U.S.C. 423(e)) (relating to*
16 *procurement integrity).*

17 “(5) *The Drug-Free Workplace Act of 1988 (sub-*
18 *title D of title V of Public Law 100–690; 41 U.S.C.*
19 *701 et seq.).*

20 “(b) *PROVISIONS INAPPLICABLE TO SUBCONTRACTORS*
21 *AND OTHER ENTITIES.—*

22 “(1) *LAWS INAPPLICABLE.—The following provi-*
23 *sions of law (and regulations prescribed under such*
24 *provisions) shall not apply to any entity described in*
25 *paragraph (2):*

1 “(A) *Each provision of law listed under*
2 *subsection (a).*

3 “(B) *The Act of March 3, 1933, commonly*
4 *referred to as the ‘Buy American Act’ (41 U.S.C.*
5 *10a–10c).*

6 “(2) *COVERED ENTITIES.—Paragraph (1) ap-*
7 *plies to each of the following:*

8 “(A) *Any division, subsidiary, or affiliate*
9 *of a prime contractor (other than the division,*
10 *subsidiary, or affiliate that is contracting with*
11 *the Government under the prime contract) or of*
12 *a subcontractor of a prime contractor, if such di-*
13 *vision, subsidiary, or affiliate is furnishing a*
14 *commercial item to the prime contractor or sub-*
15 *contractor for purposes of carrying out the prime*
16 *contract or subcontract.*

17 “(B) *Any subcontractor or supplier of a*
18 *prime contractor, if the subcontractor or supplier*
19 *is furnishing a commercial item to the prime*
20 *contractor for purposes of carrying out the prime*
21 *contract.*

22 “(c) *DEFINITION.—In this section, the term ‘prime*
23 *contractor’ means a person under contract directly with the*
24 *Federal Government, other than the Department of De-*
25 *fense.’.*”

1 **SEC. 7017. CONFORMING AMENDMENTS RELATING TO INAP-**
2 **PLICABILITY OF CERTAIN PROVISIONS OF**
3 **LAW.**

4 (a) *INAPPLICABILITY OF PROHIBITION ON LIMITING*
5 *SUBCONTRACTOR DIRECT SALES TO THE UNITED*
6 *STATES.*—Section 303G of the Federal Property and Ad-
7 ministrative Services Act of 1949 (41 U.S.C. 253g), as
8 amended by section 4042(a), is further amended by adding
9 at the end the following new subsection:

10 “(d) An agreement between the contractor in a con-
11 tract for the acquisition of commercial items and a sub-
12 contractor under such contract that restricts sales by such
13 subcontractor directly to persons other than the contractor
14 may not be considered to unreasonably restrict sales by that
15 subcontractor to the United States in violation of the provi-
16 sion included in such contract pursuant to subsection (a)
17 if the agreement does not result in the Federal Government
18 being treated differently with regard to the restriction than
19 any other prospective purchaser of such commercial items
20 from that subcontractor.”.

21 (b) *INAPPLICABILITY OF REQUIREMENT FOR CON-*
22 *TRACT CLAUSE REGARDING CONTINGENT FEES.*—Section
23 304(a) of the Federal Property and Administrative Services
24 Act of 1949 (41 U.S.C. 254(a)), as amended by section
25 4042(b), is further amended by inserting before the period
26 at the end of the sentence added by section 4042(b) the fol-

1 *lowing: “or to a contract for the acquisition of commercial*
 2 *items”.*

3 ***Subtitle C—Acquisitions Generally***

4 ***SEC. 7021. CONFORMING AMENDMENT RELATING TO INAP-*** 5 ***PLICABILITY OF CERTAIN PROVISIONS OF*** 6 ***LAW.***

7 *Section 5152 of the Drug-Free Workplace Act of 1988*
 8 *(subtitle D of title V of Public Law 100–690; 41 U.S.C.*
 9 *701 et seq.), as amended by section 4054, is further amend-*
 10 *ed by inserting after the matter inserted by such section*
 11 *4057 the following: “; other than a contract for the procure-*
 12 *ment of commercial items (as defined, as applicable, in sec-*
 13 *tion 315 of the Federal Property and Administrative Serv-*
 14 *ices Act of 1949 or section 2281 of title 10, United States*
 15 *Code),”.*

16 ***SEC. 7022. FLEXIBLE DEADLINES FOR SUBMISSION OF OF-*** 17 ***FERS OF COMMERCIAL ITEMS.***

18 *Section 18(a) of the Office of Federal Procurement Pol-*
 19 *icy Act (41 U.S.C. 416(a)) is amended in paragraph (4)*
 20 *(as added by section 4013(b))—*

21 *(1) by inserting “(A)” after “(4)”;* and

22 *(2) by adding at the end the following new sub-*
 23 *paragraph:*

24 *“(B) The requirements of paragraph (3)(B) shall not*
 25 *apply to bids or proposals for contracts for the purchase*

1 *of commercial items, as defined in section 4(12) of this Act.*
 2 *The Administrator shall promulgate regulations establish-*
 3 *ing appropriate time limits (but not less than 5 working*
 4 *days) for the submission of such bids or proposals in re-*
 5 *sponse to the notice required by paragraph (1)(A).”.*

6 **SEC. 7023. ADDITIONAL RESPONSIBILITIES FOR ADVOCATES FOR COMPETITION.**
 7

8 *Section 20(c) of the Office of Federal Procurement Pol-*
 9 *icy Act (41 U.S.C. 418(c)) is amended to read as follows:*
 10 *“(c) The advocate for competition for each procuring*
 11 *activity shall be responsible for promoting full and open*
 12 *competition, promoting the acquisition of commercial items*
 13 *and other nondevelopmental items, and challenging barriers*
 14 *to such acquisition, including such barriers as unneces-*
 15 *sarily restrictive statements of need, unnecessarily detailed*
 16 *specifications, and unnecessarily burdensome contract*
 17 *clauses.”.*

18 **SEC. 7024. PROVISIONS NOT AFFECTED.**

19 *Nothing in this title shall be construed as modifying*
 20 *or superseding, or intending to impair or restrict authori-*
 21 *ties or responsibilities under, any of the following provi-*
 22 *sions of law:*

- 23 *(1) Section 2323 of title 10, United States Code.*
 24 *(2) Section 8(a) of the Small Business Act (15*
 25 *U.S.C. 637(a)).*

1 (3) *Title IX of the Federal Property and Admin-*
 2 *istrative Services Act of 1949 (40 U.S.C. 541 et seq.),*
 3 *popularly referred to as the “Brooks Architect-Engi-*
 4 *neers Act”.*

5 (4) *Section 111 of the Federal Property and Ad-*
 6 *ministrative Services Act of 1949 (40 U.S.C. 759),*
 7 *popularly referred to as the “Brooks Automatic Data*
 8 *Processing Act”.*

9 (5) *The Act of June 25, 1938 (41 U.S.C. 46–*
 10 *48c), that was revised and reenacted in the Act of*
 11 *June 23, 1971 (85 Stat. 77), popularly referred to as*
 12 *the “Javits-Wagner-O’Day Act”.*

13 **SEC. 7025. COMPTROLLER GENERAL REVIEW OF FEDERAL**
 14 **GOVERNMENT USE OF MARKET RESEARCH.**

15 (a) *REPORT REQUIRED.*—*Not later than two years*
 16 *after the date of the enactment of this Act, the Comptroller*
 17 *General of the United States shall submit to the Congress*
 18 *a report on the use of market research by the Federal Gov-*
 19 *ernment in support of the procurement of commercial items*
 20 *and nondevelopmental items.*

21 (b) *CONTENT OF REPORT.*—*The report shall include*
 22 *the following:*

23 (1) *A review of existing Federal Government*
 24 *market research efforts to gather data concerning*
 25 *commercial and other nondevelopmental items.*

1 (2) *A review of the feasibility of creating a Gov-*
 2 *ernment-wide data base for storing, retrieving, and*
 3 *analyzing market data, including use of existing Fed-*
 4 *eral Government resources.*

5 (3) *Any recommendations for changes in law or*
 6 *regulations that the Comptroller General considers*
 7 *appropriate.*

8 ***TITLE VIII—MISCELLANEOUS***
 9 ***PROVISIONS***

10 ***SEC. 8001. EDUCATION AND TRAINING.***

11 *Section 6(d)(5) of the Office of Federal Procurement*
 12 *Policy Act (41 U.S.C. 405(d)(4)) is amended—*

13 (1) *by striking out “and” at the end of subpara-*
 14 *graph (A);*

15 (2) *by striking out the semicolon at the end of*
 16 *subparagraph (B) and inserting in lieu thereof “;*
 17 *and”;* and

18 (3) *by adding at the end the following new sub-*
 19 *paragraph:*

20 *“(C) establish policies and procedures for*
 21 *the establishment and implementation of edu-*
 22 *cation and training programs authorized by this*
 23 *Act, including the establishment and implemen-*
 24 *tation of training, in conjunction with the Gen-*
 25 *eral Services Administration, for critical pro-*

1 curement personnel designed to increase the par-
2 ticipation of small business concerns owned and
3 controlled by socially and economically dis-
4 advantaged individuals, women, and other mi-
5 norities in procurement activities conducted by
6 an executive agency.”.

7 **SEC. 8002. DEPARTMENT OF DEFENSE ACQUISITION OF IN-**
8 **TELLECTUAL PROPERTY RIGHTS.**

9 Section 2386 of title 10, United States Code, is amend-
10 ed by striking out paragraphs (3) and (4) and inserting
11 in lieu thereof the following:

12 “(3) Technical data and computer software.

13 “(4) Releases for past infringement of patents or
14 copyrights or for unauthorized use of technical data
15 or computer software.”.

16 **SEC. 8003. COOPERATIVE PURCHASING.**

17 Section 201(b) of the Federal Property and Adminis-
18 trative Services Act of 1949 (40 U.S.C. 481(b)) is amended
19 to read as follows:

20 “(b)(1) The Administrator may provide any of the
21 services specified in subsection (a) of this section to any
22 other Federal agency or mixed ownership corporation (as
23 defined in chapter 91 of title 31, United States Code).

1 “(2) The Administrator may provide for the utiliza-
 2 tion of Federal supply schedules or other schedule contracts
 3 by any of the following entities upon their request:

4 “(A) The various States and their political sub-
 5 divisions, including local governments, or any depart-
 6 ment or agency thereof.

7 “(B) The District of Columbia and the Common-
 8 wealth of Puerto Rico.

9 “(C) Indian tribal governments.

10 “(3) The authorization provided in this subsection
 11 shall not be construed to allow ordering of existing stock
 12 or inventory by the entities listed in paragraph (2) from
 13 federally owned and operated, or federally owned and con-
 14 tractor-operated, supply depots, warehouses, or similar fa-
 15 cilities.”.

16 **SEC. 8004. SENSE OF CONGRESS ON NEGOTIATED RULE-**
 17 **MAKING.**

18 (a) *FINDINGS.*—The Congress finds the following:

19 (1) The use of negotiated rulemaking or similar
 20 policy discussion group techniques is an appropriate
 21 tool for—

22 (A) fostering effective implementation of,
 23 and compliance with, laws and regulations;

24 (B) avoiding litigation; and

1 (C) achieving more productive and equitable
 2 relationships between the Federal Government
 3 and the regulated segments of the private sector.

4 (2) The use of negotiated rulemaking or similar
 5 techniques in Federal procurement regulations could
 6 be appropriate given the extreme complexity and in-
 7 tricate interactions between buyer and seller in Fed-
 8 eral procurements.

9 (b) *SENSE OF CONGRESS.*—It is the sense of Congress
 10 that, in prescribing acquisition regulations, the Federal Ac-
 11 quisition Regulatory Council should consider using nego-
 12 tiated rulemaking procedures in accordance with sections
 13 561 through 570 of title 5, United States Code, or similar
 14 techniques intended to achieve the benefits described in sub-
 15 section (a)(1).

16 **SEC. 8005. EXTENSION OF DEFENSE ACQUISITION**
 17 **WORKFORCE POLICIES GOVERNMENT-WIDE.**

18 The Office of Federal Procurement Policy Act (41
 19 U.S.C. 401 et seq.) is amended by adding at the end the
 20 following new section:

21 **“SEC. 30. MANAGEMENT POLICIES.**

22 “(a) *REQUIREMENT FOR GOVERNMENT-WIDE*
 23 *WORKFORCE POLICIES.*—The Administrator for Federal
 24 Procurement Policy shall extend Government-wide the de-
 25 fense acquisition workforce policies contained in chapter 87

1 *of title 10, United States Code. In extending policies Gov-*
2 *ernment-wide, the Administrator may modify such policies*
3 *as necessary to recognize differences between and among de-*
4 *fense and nondefense departments and agencies.*

5 “(b) *DESIGNATION OF ACQUISITION POSITIONS.*—After
6 *consultation with the heads of agencies, the Administrator*
7 *shall establish policies and procedures for agency heads to*
8 *designate acquisition positions and to manage employees*
9 *serving in the designated acquisition positions. Such poli-*
10 *cies and procedures—*

11 “(1) *shall allow agency heads to designate spe-*
12 *cific positions or categories of positions as acquisition*
13 *positions; and*

14 “(2) *shall address accession, education, training,*
15 *and career development of employees serving in acqui-*
16 *sition positions.*

17 “(c) *SMALL AGENCY NEEDS.*—In carrying out this sec-
18 *tion, the Administrator shall take due consideration of the*
19 *needs of small agencies in formulating and implementing*
20 *policy and programs under this section to ensure that the*
21 *benefits of such policy and programs accrue to small agen-*
22 *cies.*

23 “(d) *UNIFORMITY.*—(1) *Subject to paragraph (2), the*
24 *Administrator shall ensure that, to the maximum extent*
25 *practicable, the acquisition workforce policies and proce-*

1 *dures developed pursuant to this section are uniform in*
 2 *their implementation throughout the executive agencies.*

3 “(2) *With respect to acquisition workforce policies and*
 4 *procedures, the Department of Defense shall be subject only*
 5 *to the requirements of chapter 87 of title 10, United States*
 6 *Code.*

7 “(e) *FEDERAL ACQUISITION INSTITUTE.—Subject to*
 8 *the authority, direction and control of the Administrator,*
 9 *the Director of the Federal Acquisition Institute shall en-*
 10 *sure that the policies established under this section are im-*
 11 *plemented throughout the Federal Government. The Admin-*
 12 *istrator for General Services, with the concurrence of the*
 13 *Administrator for Federal Procurement Policy, may estab-*
 14 *lish such additional positions in the Federal Acquisition*
 15 *Institute as may be necessary to carry out the preceding*
 16 *sentence.*

17 “(f) *REGULATIONS.—The Administrator shall pre-*
 18 *scribe such regulations as may be necessary to carry out*
 19 *the purposes of this section.’’.*

20 **SEC. 8006. VENDOR AND EMPLOYEE EXCELLENCE AWARDS.**

21 *Section 6(d) of the Office of Federal Procurement Pol-*
 22 *icy Act (41 U.S.C. 405(d)) is amended—*

23 *(1) by striking out the period at the end of para-*
 24 *graph (10) (as redesignated by section 4011(b)(2))*
 25 *and inserting in lieu thereof a semicolon; and*

1 (2) by adding at the end the following new para-
2 graphs:

3 “(11) providing for a Government-wide award to
4 recognize and promote vendor excellence; and

5 “(12) providing for a Government-wide award to
6 recognize and promote excellence in officers and em-
7 ployees of the Federal Government serving in procure-
8 ment-related positions.”.

9 **SEC. 8007. DEPARTMENT OF DEFENSE REVIEW OF ANTI-**
10 **TRUST CASES WITH NATIONAL SECURITY IM-**
11 **PLICATIONS.**

12 (a) *IN GENERAL.*—Subchapter II of chapter 148 of
13 title 10, United States Code, is amended by adding at the
14 end the following new section:

15 **“§ 2508. Antitrust cases with national security impli-**
16 **cations: Secretary of Defense review**

17 “(a) *REVIEW.*—The Secretary of Defense shall conduct
18 a review of any proposed acquisition of a business concern
19 that is a critical United States defense supplier with respect
20 to which the Attorney General or the Federal Trade Com-
21 mission receives notice under the antitrust laws. In con-
22 ducting such review, the Secretary shall assess the likely ef-
23 fect of the proposed acquisition (if carried out) on the policy
24 objectives for the national technology and industrial base
25 (as set forth in section 2501(a) of this title) and on such

1 *other considerations relating to national security as the*
2 *Secretary considers appropriate.*

3 “(b) *COMMUNICATION OF VIEWS OF SECRETARY.*—In
4 *any case in which the Secretary determines, as the result*
5 *of a review and assessment under subsection (a), that a pro-*
6 *posed acquisition is likely to have an appreciable effect*
7 *(whether positive or negative) on the policy objectives for*
8 *the national technology and industrial base or on other con-*
9 *siderations relevant to national security (as determined by*
10 *the Secretary), the Secretary shall immediately commu-*
11 *nicate that determination, in writing, to the Attorney Gen-*
12 *eral and the Federal Trade Commission. The Secretary*
13 *shall include in such communication the Secretary’s evalua-*
14 *tion concerning the proposed acquisition.*

15 “(c) *DEFINITION.*—In this section, the term ‘critical
16 *United States defense supplier’ means a company organized*
17 *under the laws of the United States that is—*

18 “(1) *a contractor or critical subcontractor for a*
19 *major system, as defined in section 2302(9) of this*
20 *title;*

21 “(2) *a contractor for a contract awarded to a*
22 *particular source pursuant to paragraph (3) of sec-*
23 *tion 2304(c) of this title for the reasons described in*
24 *clause (A) of that paragraph; or*

1 “(3) in such other category as the Secretary of
2 Defense may prescribe by regulation as being critical
3 to the national technology and industrial base.”.

4 (b) *CLERICAL AMENDMENT.*—The table of sections at
5 the beginning of such subchapter is amended by adding at
6 the end the following new item:

 “2508. Antitrust cases with national security implications: Secretary of Defense
 review.”.

7 **SEC. 8008. TECHNICAL AND CLERICAL AMENDMENTS.**

8 (a) *TABLE OF CONTENTS AMENDMENTS.*—

9 (1) *OFFICE OF FEDERAL PROCUREMENT POLICY*
10 *ACT.*—Section 1 of the Office of Federal Procurement
11 Policy Act (41 U.S.C. 401 note) is amended to read
12 as follows:

13 **“SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

14 “(a) *SHORT TITLE.*—This Act may be cited as the ‘Of-
15 fice of Federal Procurement Policy Act’.

16 “(b) *TABLE OF CONTENTS.*—The table of contents for
17 this Act is as follows:

 “Sec. 1. Short title; table of contents.

 “Sec. 2. Declaration of policy.

 “Sec. 3. Findings and purpose.

 “Sec. 4. Definitions.

 “Sec. 4A. Simplified acquisition threshold.

 “Sec. 4B. Procedures applicable to purchases below micro-purchase threshold.

 “Sec. 5. Office of Federal Procurement Policy.

 “Sec. 6. Authority and functions of the Administrator.

 “Sec. 7. Administrative powers.

 “Sec. 8. Responsiveness to Congress.

 “Sec. 9. Effect on existing laws.

 “Sec. 10. Effect on existing regulations.

 “Sec. 11. Authorization of appropriations.

 “Sec. 12. Delegation.

 “Sec. 14. Access to information.

“Sec. 15. Tests of innovative procurement methods and procedures.
 “Sec. 16. Executive agency responsibilities.
 “Sec. 18. Procurement notice.
 “Sec. 19. Record requirements.
 “Sec. 20. Advocates for competition.
 “Sec. 21. Rights in technical data.
 “Sec. 22. Publication of proposed regulations.
 “Sec. 23. Contracting functions performed by Federal personnel.
 “Sec. 24. Travel expenses of Government contractors.
 “Sec. 25. Federal Acquisition Regulatory Council.
 “Sec. 26. Cost Accounting Standards Board.
 “Sec. 27. Procurement integrity.
 “Sec. 28. Advocate for the Acquisition of Commercial Products.
 “Sec. 29. Federal acquisition computer network (FACNET).
 “Sec. 30. Management policies.”.

1 (2) *FEDERAL PROPERTY AND ADMINISTRATIVE*
 2 *SERVICES ACT OF 1949.—Section 1 of the Federal*
 3 *Property and Administrative Services Act of 1949 (41*
 4 *U.S.C. 471 et seq.) is amended to read as follows:*

5 **“SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

6 “(a) *SHORT TITLE.—This Act may be cited as the*
 7 *‘Federal Property and Administrative Services Act of 1949’.*

8 “(b) *TABLE OF CONTENTS.—The table of contents for*
 9 *this Act is as follows:*

“Sec. 1. Short title; table of contents.
 “Sec. 2. Declaration of policy.
 “Sec. 3. Definitions.

“TITLE I—ORGANIZATION

“Sec. 101. General Services Administration.
 “Sec. 102. Transfer of affairs of Bureau of Federal Supply.
 “Sec. 103. Transfer of affairs of the Federal Works Agency.
 “Sec. 104. Records management: Transfer of the National Archives.
 “Sec. 106. Redistribution of functions.
 “Sec. 107. Transfer of funds.
 “Sec. 109. General supply fund.
 “Sec. 110. Information Technology Fund.
 “Sec. 111. Automatic data processing equipment.
 “Sec. 112. Federal information centers.

“TITLE II—PROPERTY MANAGEMENT

“Sec. 201. Procurement, warehousing, and related activities.
 “Sec. 202. Property utilization.

- "Sec. 203. Disposal of surplus property.*
- "Sec. 204. Proceeds from transfer or disposition of property.*
- "Sec. 205. Policies, regulations, and delegations.*
- "Sec. 206. Surveys, standardization, and cataloging.*
- "Sec. 207. Applicability of antitrust laws.*
- "Sec. 208. Employment of personnel.*
- "Sec. 209. Civil remedies and penalties.*
- "Sec. 210. Operation of buildings and related activities.*
- "Sec. 211. Motor vehicle identification and operation.*
- "Sec. 212. Reports to Congress.*

"TITLE III—PROCUREMENT PROCEDURE

- "Sec. 301. Declaration of purpose.*
- "Sec. 302. Application and procurement methods.*
- "Sec. 302A. Simplified acquisition threshold.*
- "Sec. 302B. Implementation of FACNET capability.*
- "Sec. 303. Competition requirements.*
- "Sec. 303A. Planning and solicitation requirements.*
- "Sec. 303B. Evaluation and award.*
- "Sec. 303C. Encouragement of new competition.*
- "Sec. 303D. Validation of proprietary data restrictions.*
- "Sec. 303F. Economic order quantities.*
- "Sec. 303G. Prohibition of contractors limiting subcontractor sales directly to the United States.*
- "Sec. 304. Contract requirements.*
- "Sec. 304A. Multiyear contracts.*
- "Sec. 304B. Cost or pricing data: truth in negotiations.*
- "Sec. 304C. Examination of records of contractor.*
- "Sec. 305. Contract financing.*
- "Sec. 306. Allowable costs.*
- "Sec. 307. Administrative determinations and delegations.*
- "Sec. 309. Definitions.*
- "Sec. 310. Statutes not applicable.*
- "Sec. 311. Cooperative agreements for basic, applied, and advanced research.*
- "Sec. 312. Assignment and delegation of procurement functions and responsibilities.*
- "Sec. 313. Determinations and decisions.*
- "Sec. 314. Undefined contractual actions: restrictions.*
- "Sec. 315. Definitions relating to procurement of commercial items.*
- "Sec. 315A. Preference for acquisition of commercial items and other nondevelopmental items.*
- "Sec. 315B. Pricing documentation for commercial items.*
- "Sec. 315C. Regulations on acquisition of commercial items.*
- "Sec. 315D. Principle of construction with future laws.*
- "Sec. 315E. Inapplicability of certain provisions of law.*

"TITLE IV—FOREIGN EXCESS PROPERTY

- "Sec. 401. Disposal of foreign excess property.*
- "Sec. 402. Methods and terms of disposal.*
- "Sec. 403. Proceeds; foreign currencies.*
- "Sec. 404. Miscellaneous provisions.*

“TITLE VI—GENERAL PROVISIONS

“Sec. 601. *Applicability of existing procedures.*

“Sec. 602. *Repeal and saving provisions.*

“Sec. 603. *Authorization for appropriations and transfer of authority.*

“Sec. 604. *Separability.*

“Sec. 605. *Effective date.*

“TITLE VIII—URBAN LAND UTILIZATION

“Sec. 801. *Short title.*

“Sec. 802. *Declaration of purpose and policy.*

“Sec. 803. *Disposal of urban lands.*

“Sec. 804. *Acquisition or change of use of real property.*

“Sec. 805. *Waiver during national emergency.*

“Sec. 806. *Definitions.*

“TITLE IX—SELECTION OF ARCHITECTS AND ENGINEERS

“Sec. 901. *Definitions.*

“Sec. 902. *Policy.*

“Sec. 903. *Requests for data on architectural and engineering services.*

“Sec. 904. *Negotiation of contracts for architectural and engineering services.”.*

1 (b) AMENDMENTS FOR STYLISTIC CONSISTENCY.—

2 (1) OFFICE OF FEDERAL PROCUREMENT POLICY
3 ACT.—The Office of Federal Procurement Policy Act
4 (41 U.S.C. 401 et seq.) is amended so that the section
5 designation and section heading of each section of
6 such Act is in the same form and typeface as the sec-
7 tion designation and heading of this section.

8 (2) FEDERAL PROPERTY AND ADMINISTRATIVE
9 SERVICES ACT OF 1949.—The Federal Property and
10 Administrative Services Act of 1949 (41 U.S.C. 471
11 et seq.) is amended so that the section designation
12 and section heading of each section of such Act is in
13 the same form and typeface as the section designation
14 and heading of this section.

1 (c) *REPEALS OF EXECUTED PROVISIONS.*—The Office
 2 of Federal Procurement Policy Act (41 U.S.C. 401 et seq.)
 3 is amended—

4 (1) by striking out section 13; and

5 (2) by striking out the first section 15.

6 (d) *CROSS REFERENCE CORRECTIONS.*—Section 3552
 7 of title 31, United States Code, is amended—

8 (1) by striking out “section 111(h)” and insert-
 9 ing in lieu thereof “section 111(f)”; and

10 (2) by striking out “759(h)” and inserting in
 11 lieu thereof “759(f)”.

12 (e) *CONSISTENCY OF TERMINOLOGY WITH CUSTOMARY*
 13 *USAGE.*—Section 304(b) of the Federal Property and Ad-
 14 ministrative Services Act of 1949 (41 U.S.C. 254(b)) is
 15 amended by striking out “per centum” each place it ap-
 16 pears and inserting in lieu thereof “percent”.

17 ***TITLE IX—EFFECTIVE DATES*** 18 ***AND REGULATIONS***

19 ***SEC. 9001. EFFECTIVE DATES.***

20 (a) *IN GENERAL.*—Except as provided in subsection
 21 (b), this Act and the amendments made by this Act shall
 22 apply with respect to any contract for which a solicitation
 23 for bid or proposal is issued after—

1 (1) 30 days have expired after the issuance in
 2 final form of revisions to the Federal Acquisition Reg-
 3 ulation pursuant to section 10002; or

4 (2) 180 days have expired after the date of the
 5 enactment of this Act;

6 whichever is earlier.

7 (b) *SPECIFIC EFFECTIVE DATES.*—(1) Titles III and
 8 VI of this Act, and the amendments made by such titles,
 9 shall take effect on the date of the enactment of this Act.

10 (2) Subtitle D of title I of this Act, and the amend-
 11 ments made by such subtitle (relating to procurement pro-
 12 tests), shall apply with respect to any protest filed after the
 13 expiration of the 90-day period beginning on the date of
 14 the enactment of this Act.

15 **SEC. 9002. REGULATIONS.**

16 Not later than 150 days after the date of the enactment
 17 of this Act, the Federal Acquisition Regulation (referred to
 18 in section 25(c) of the Office of Federal Procurement Policy
 19 Act (41 U.S.C. 421(c))) shall be revised, in final form, to
 20 implement this Act and the amendments made by this Act.

 Amend the title so as to read: “A bill to amend title
 10, United States Code, the Federal Property and Admin-
 istrative Services Act of 1949, and the Office of Federal
 Procurement Policy Act to improve the Federal acquisition
 process, and for other purposes.”.

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Union Calendar No. 303

103D CONGRESS
2D SESSION

H. R. 2238

[Report No. 103-545, Parts I and II]

A BILL

To amend laws relating to Federal procurement, to authorize functions and activities under the Federal Property and Administrative Services Act of 1949, and for other purposes.

JUNE 17, 1994

Reported from the Committee on Armed Services with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed